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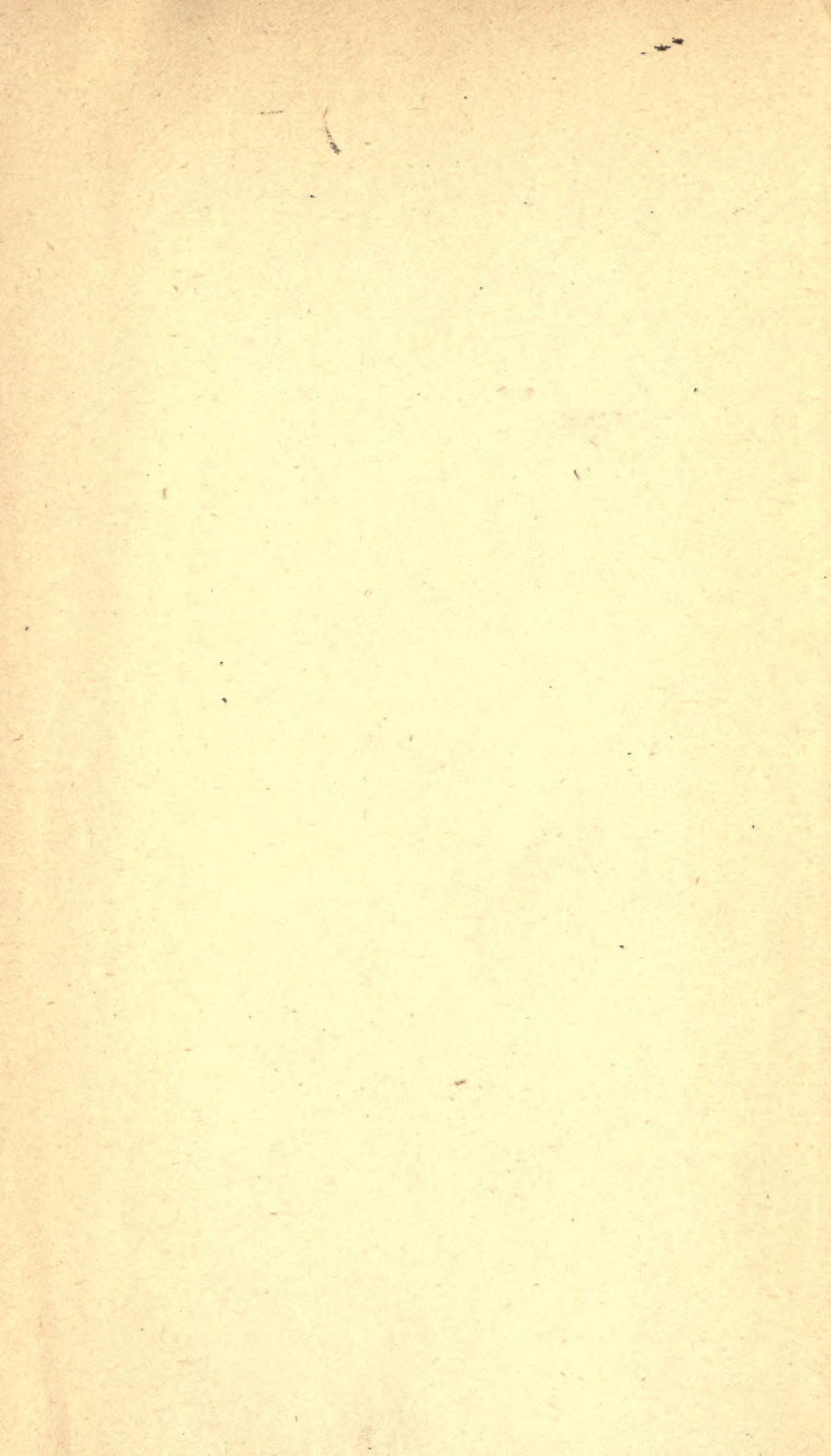
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HOW TO RUN A CORPORATION

(ENLARGED EDITION)

A REVISED TREATISE AND COMMENTARY on the Formation, Incorporation, Organization, Reorganization, and Management of Industrial Corporations, including the Analysis of a Corporation, General and Special, and its Advantages, Forms of Charters, the Initial Meeting, Best Place to Incorporate, By-Laws and Minutes for the Organization, Annual and all Meetings, General and Special, together with Briefs and Suggestions for all kinds of Corporate Contracts, Watered Stock, Voting Trusts, Reorganization, Consolidation, Closing Up the Corporation, Northern Securities, Charter, Etc.

BY A. J. DAGGS

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Supreme Court of the United States.

Author of "Tramp Corporations," a Treatise on the Rights of Corporations under the Foreign Corporation and Retaliatory Corporate Acts of the States and Territories

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AUTHOR'S PREFACE

DEDICATION

This work is respectfully dedicated to Robert E. Daggs, the President of the Arizona Corporation Charter Guarantee Company, at whose suggestion and by whose assistance the book has been prepared.

AUTHOR'S PREFACE

This treatise on corporate law and forms was prepared for the use of those managing corporations. It is designed to show the beginner how to proceed correctly in the management of a corporation. It is not designed to show you how to practice law, but how to conduct a corporation according to law.

Should it be criticized by the skilful because its suggestions or forms are plain or simple, it is sufficient to say that is just what the beginner needs the most. It is the elements that make the tremendous whole. It is the little things that form the component parts.

The most difficult problem becomes easy after it is once solved. So, too, must the most astute forensic scholar have to learn the little things in order to compile his philosophy, wise or ill, and precisely having reached his goal, did he not first begin?

Knowledge is power when it's true. Knowledge, it's true, never is new, but the relic of dust heap forgotten. There is nothing new but the old brought to view by the power of inquisitive knowledge. The new is not true; the true is not new.

With these suggestions, the author is prepared to apologize to the reading world, if it is found that he has drawn nothing from the dust heaps of the past and written a new book.

In gathering the material for this volume, it has been the effort to point out what the law is now, and is used through forms that have stood the test of juridical scrutiny, and not only to suggest what to do, but just how to do it. Something explanatory has been said about each subject and each form that may help the understanding.

If the work is found instructive to those it is designed to assist, it is well; the author is satisfied.

A. J. DAGGS.

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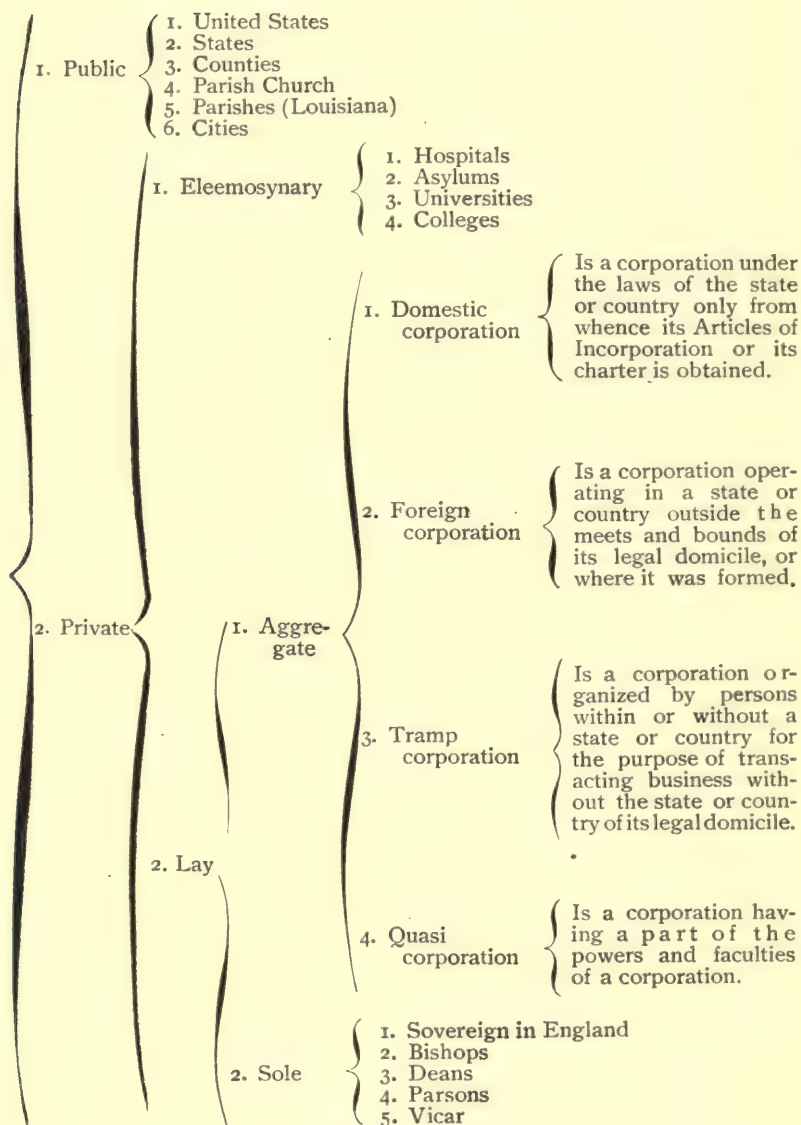
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DIAGRAM OF CORPORATIONS



PART I.

CHAPTER I.

INTRODUCTION.

Section 1. Romans Originated Plan of Incorporation.

Who invented the scheme of private property is lost in the obscurity of antiquity. The genius of the Romans possibly originated the idea of the incorporation, some writers state as early at least as 600 B. C., being much the same as the incorporation of the present time. The American people have carried this invention far beyond the Romans in its industrial scope. Forms, fixed opinions, stereotyped for ages, have been set aside, and new ones made, to meet the ever-growing demand of enterprise and intelligence, while method has supervised it all.

§ 2. United States a Pyramid of Corporations.

The United States was shaped and molded out of virgin country, and is the grandest public body politic and corporate that has yet been erected throughout the ages of history, within which corporate States, each of themselves large enough for an empire, have been carved as pillars, within which corporate counties, cities, and towns have been constructed as the lower superstructure, all resting upon the shoulders of the millions of the good, the wise, the learned, and the refined people as the foundation of this grandest pyramid of corporations.

§ 3. United States a School of Corporations.

Is it alarming that such a people, schooled in this University of Corporations in a new and productive country, should devise ways and means by which they could grow with its growth, strengthen with its strength, prefer it to

themselves and enjoy its fruits, under the scheme of private property? Logically, therefore, to surround these resources and share their profits, corporations, associations, partnerships have been formed, and all these, together with individual effort combined, have scarcely been able to care for the resources of the internal and external commerce. Out of the genius of avarice, another juristic masterpiece of conquest has been formed, the "Trust." That it was a necessity to protect vast accumulations already amassed or to grasp for more, is a matter not for this volume. Its discomforting influence possibly furnishes better food for the languishing politician. However, it undoubtedly has come to stay.

§ 4. Incorporation by Act of the Legislature.

The corporation prior to A. D. 1837, in all the States of the United States must be obtained by act of the legislative authority of the State or the Congress of the United States.

§ 5. First General Incorporation Act Passed 1837.

Connecticut passed the first general incorporation act in 1837, since which most of the States have passed acts quite similar in their scope. A classification and commentation on each would make a volume far beyond the purpose of this work, besides it would not be within the special purpose of this work. Suffice it to say, that in only seven States now can incorporation be had through special legislative enactments.

§ 6. Articles of Incorporation a Contract.

Under the English laws the corporation was formed by a grant of authority from the Crown or by Parliament. Under the laws of the United States, such authority was granted by the Legislature or by the Congress. In either or in all such cases such authority rested in the acts creating the corporation, and some kind of a license being issued also, such right or license was called the "charter" of the corporation. Under the laws as they now stand in most of the States, corporations are framed under general incorporation

laws which are called "Articles of Incorporation," or other similar name, and held to be and are only a form of contract between the State, the corporation, and the individuals who compose and control it, as will be hereafter shown.

§ 7. Granting Charters by Legislatures Abandoned.

Few States retain the power to grant charters, and fewer still are granted. Charters are, and have been found to be by experience, very unsatisfactory and unsuited to a business country like the United States. As its rights rested in the act creating it alone, which must be changed, if at all, by legislative sanction at its regular session, while Articles of Incorporation not only have the full sanction of the powers granted by the general incorporation act, with all things granted that are not especially inhibited, together with all the powers especially taken by its Articles of Incorporation as well, and may be amended at pleasure by the incorporators or its officers.

§ 8. Incorporation Plan Growth.

The rapid growth of the corporation as a plan of doing business since 1837 is no less marked than the rise and growth of any other form of progress of the American people.

From the gleaner and reap-hook to the steam header and thrasher; the ox team to the lightning express; the bows, arrows, and flintlocks to the rapid-firing guns; the tallow candle to the electric and incandescent lights; the rocker pick and shovel to the cyanide process; the crab to the seedless apple, are a few among thousands of living examples that could be enumerated of the progressive genius of this great people, that scarcely comes without the memory of one man.

§ 9. Lawyer as Business Pilot.

The lawyer to-day who sits in his office and waits for fees and statesmanship to run him down, as of old, too often grows lank of limb and lean of purse, while the council who grasps the spirit of the times selects his specialty, acts not only as the lawyer, but as the business pilot of the enterprise, is the harvester of power and reward.

§ 10. Prejudice Against Corporations None.

The prejudice that existed a quarter of a century ago or more against corporations can scarcely be now noticed, except as it is kindled in certain quarters upon a mistaken state of facts for political purposes.

§ 11. Progression of Law and Courts.

The law is progressive, and our courts are no less alive to the importance of rulings coincident with the spirit of business; for instance, the earlier decisions held that stockholders' meetings held out of the State of incorporation were absolutely void, while the Supreme Court of the United States now holds that what is not especially inhibited by the law is as much granted as if it were especially given, and where the statute does not forbid meetings of stockholders out of the State, such meetings may be held with impunity, and in any event, even in the face of the statutory inhibition, all stockholders present at such meetings are bound, and if all are present, the meeting is valid as to all.

§ 12. Profit.

Profit is one of the features of golden hope. Nothing could more effectually snap the mainspring of life than to know that one was doomed to eternal labor with a constant decline of or no reward.

§ 13. Incorporation Medium of Profit.

The ever-growing intelligence seeks the most advantageous mode of conducting enterprises that the greatest profit may be reaped with minimized effort and liability. It is the chief purpose of a free government to leave unfettered and untrammelled the progressive spirit of its people, that they may be free to accomplish whatever tends to better their condition. This result can best be reached through the medium of incorporation.

CHAPTER II.

ANALYSIS OF THE CORPORATION GENERALLY.

§ 14. Corporation Defined.

First: Defined, a corporation is a legal creature existing solely in contemplation of law, having the functions of a natural person and such others as the law gives to make contracts, own, and control property.

§ 15. Betterment of Business.

Second: The corporation was conceived in advantage and sanctioned by express enactment for the betterment of the business interests of mankind.

§ 16. Existence.

Third: It has its beginning, its existence, and its close.

§ 17. Originates.

Fourth: It originates in the minds of one or more upon the given point, "to incorporate."

§ 18. Corporate Fiction.

Fifth: To incorporate, decided, coupled with a compliance with especial legislative sanction or general enactment, ripens into or creates the fiction called corporate franchise, belonging to the member or members who compose or own it.

§ 19. Legal Existence Distinct.

(a) It is a distinct, legal existence, being entirely separate and apart from the persons who created it or own it.

§ 20. Perpetual Succession.

(b) It has the element of "perpetual succession." By this is meant that the corporation retains its identity as a legal entity, even though its members may die or dispose of their interests in it. In contradistinction to this, the death of a member of any association terminates its existence, such as

a co-partnership. If a member sell his stock in the corporation, the purchaser steps into his shoes, taking all his rights and assuming all his corporate liabilities.

§ 21. Potential Perpetuity.

(c) Generally it has potential perpetuity, by means of its stockholders so designating, whenever its charter rights are about to expire by limitation of statutory enactment, unless limited or given eternal existence by law in the first instance.

§ 22. Plenary Power of State.

(d) Its existence may be terminated or closed by the members themselves, by its creditors, or by the State. The inherent plenary power of the State to restrain or dissolve corporations for illegal conduct is not unlike its power to regulate natural persons. This is the police power of the State over either.

§ 23. Eminent Domain by State.

(e) Like a natural person, its property or its franchise may be taken by virtue of the power of eminent domain by the State, by making just compensation therefor, which latter will also terminate its existence.

§ 24. Forming Subscriptions Not Necessary.

(f) The corporation may be formed by the individual members agreeing to form a corporation. Generally they then sign and acknowledge the Articles of Incorporation, if the corporate franchise is obtained through general incorporation acts. They may subscribe for stock before incorporation, or they may subscribe for it afterward, or they may buy the stock from the corporation. In either case, whether they did or did not ever merely subscribe or take out stock, would not affect the corporate entity, unless a subscription was made by statute, a condition precedent to its existence, otherwise it would exist as a close corporation dependent upon the agreement of the incorporators.

§ 25. Subscription Breach Contract.

(g) If he subscribed and failed to take the stock, that would be a breach of his contract to the corporation when it came into existence.

§ 26. Transfer of Stock Ceases to be Liable.

(h) The corporation being the owner of the property in which it deals, and doing the business, contracting the debts, and being distinct from those who own stock in it, it follows as an incident to the transfer of its stock from one to another that the assignor remains no longer liable to either his associates or third persons for corporate debts, unless the transfer is fraudulent, while the assignee becomes invested with all the rights and liabilities of the original stockholder.

§ 27. Stock Descends to Heirs Upon Demise of Owner.

(i) If the stockholder die, his property descends to his heirs, with like effect as his assignment, without in any manner disturbing the status of the corporation.

§ 28. Members' Right in Corporation Evidenced by Stock Owned.

(j) The members' rights in a corporation are such as they individually own as represented by their stock.

§ 29. Charter Bounds of Corporate Power.

(k) The scope of the power of the corporation in its business is bounded only by the terms of its charter and the law. It follows as a beneficial feature, therefore, that the liability of a member is limited to his right in the corporation as represented by his stock under the law of the locality where the charter is created.

§ 30. Corporation Must Keep Within Power of Charter.

(l) The stockholder has the right to insist that the corporation hazard nothing without the bounds of its legal power, but keep within the limit of its original object.

§ 30a. Stockholders Owe Balance on Subscription.

If, however, a stockholder pay only a partial payment for his stock, he would owe the corporation the balance in the same manner he would owe upon a contract with a natural person; his owing it would not lessen his right to the stock. The unpaid balance on stock is a fund to which creditors may look as an asset for the payment of their claims also.

§ 31. Members Must Respond to Duty.

(m) Acting as it can, only by and through its agents, a corporation must rely on its members to respond to such proportional share of the duties imposed upon them by law. Individual members are not bound to submit to every act even of those in management or control.

§ 32. Rights Enforced by Stockholders.

(n) A stockholder may sue for and enforce rights in which the corporation has an interest, in which the corporation refuse to act, or silence action of the majority when not within the scope of the charter. This is an essential and beneficial right to stockholders.

§ 33. Gist, Creature of Law.

(o) The real gist of a corporation is that it is a creature of law, created by or within the express act of the State, without which sanction it does not exist.

§ 34. Surrender to Law.

(p) A corporation must surrender to the general law of liability, as other associations and individuals do.

CHAPTER III.

ANALYSIS OF ARTICLES OF INCORPORATION.

§ 35. Three Steps Essential to Corporate Life.

1. The first step toward incorporation is the agreement between the parties to incorporate.

§ 36. Charter Matter Proper.

2. The second step is a compliance with the essential conditions precedent of legislative enactment of the State or country where the articles are to be obtained, which last constitute the charter matter proper. These essentials completed, erects the designed creation, or legal entity, or granted franchise intended by the State, and named a corporation. This legal existence, planted and germinated, its power may be understood by an analysis of the rights granted by the State.

§ 37. Powers Vested Right of Contract.

3. These rights arising by virtue of an agreement between the incorporators, coupled with an acceptance of the tendered franchise by the State through its special law or general enabling act, may be said to be, and are, essentially and properly a valid and subsisting contract, signed, sealed, and delivered, and become in so far a vested right as to yield only to such burdens as arise out of the police power or upon inherent grounds of public policy or by such reservation in the law as the associating members have assented to.

§ 38. Law Can Not Impair Contract.

4. It is its contract feature with the State that furnishes the ingredient fact that arouses the constitutional protection that the right of contract shall be held inviolate. That no law shall be passed impairing the obligation of a contract, and in this it is distinguished from all other associations. The law, regulating the mode or form of the exercise of its

contract rights may be amended or repealed, but it can not affect the corporation rights thereunder. They remain the same.

§ 39. By-laws or Statute Rules of Corporation.

5. The operation of the corporation involves the exercise of the corporate power, the regulation of the organization, and the operation of its agents and officers, and its affairs are designated by rules adopted by the stockholders, called by-laws, under Roman law called statutes. In a certain sense, the stockholders within the corporate power become a deliberate assembly, and are, as such, a law unto themselves. Usually they follow parliamentary rules of order.

§ 40. By-laws Can Not Controvert Charter or Law.

6. By-laws can not controvert charter matter nor express law, but are subservient to both, and must be reasonable to be valid.

§ 41. Purpose.

7. The purpose of a corporation as to its members and the purpose of the State in sanctioning its formation rather invite an appeal to the wisdom of the institution than to its analytical parts. Certainly the corporation offers undoubted advantages over any other association of individuals. The corporation may, in general, do anything a natural person can in the way of business, and in many localities, as in Arizona, it possesses power in addition to those of a natural person.

§ 42. Object.

8. The real object of the corporation is immediately expressed in the articles, and to carry out that particular enterprise is legitimately its proper limit, beyond which it can not go without transcending its power and its act becomes void. However, acts beyond its corporate limit as to third persons will be upheld, not on the ground of corporate extension, but, having received the benefit and created the liability, it would be estopped from taking advantage of its own act by

seeking to shield behind the lack of power in its charter to do the particular transaction.

§ 43. Horizon of Corporate Power.

9. The corporation has power precisely to carry out the business purpose expressed in its charter, and power for nothing else, except, also, incident thereto, to wind up its own affairs. The legal horizon of a corporation is that of a natural person, except such special power in addition thereto as is granted by the Legislature. Its right can go no further even on the line of the right of a natural person, except as to property. It may be granted the right of eminent domain by the State.

§ 44. Distinction of Corporation from Other Associations; Majority Stock.

10. The property of a corporation, once acquired, and its management, show a distinction to other individual associations. A corporation lives and draws its life from its stockholders. They are that of which it is composed, their exact interest being expressed by their ownership of stock. Its operation must proceed from them, not necessarily by unanimous consent, but by majority of the stock, and not by a majority of the individuals who own the stock. It would, however, be cumbersome if it required the unanimous consent, hence the majority rule. This even becomes cumbersome and expensive, and is again reduced to other agents created by the stockholders, called a board of directors, and as they are more or less inexpedient, other agents are created more effectually to attend economically to the role of business, known as an "executive committee," to relieve the board of directors, while still others, called a president, secretary, and treasurer, and sometimes an agent called a general manager, relieve the president and other officers of the corporation of many duties otherwise devolving upon them.

§ 45. Officers Governed by By-laws.

11. The by-laws regulate the specific duties of these officers and agents in their dealings and contracts. However, any

agents' acts may be ratified by the directors, it then becomes the corporate act and binds the company. Properly, all contracts entered into by the corporation when it is intended to be shown upon their face that they are done as corporate acts, are executed by its corporate name and its seal. However, its seal may be any scrawl or indenting instrument, and can be changed at pleasure. It is a formal proceeding, and may be dispensed with except on such papers as a natural person would have to use a seal. Its name as well as its seal is a means of its identification, without which it would not be its contract or its acts certainly upon their face, but would require evidence *dehors* the contract to show the contract that of the Corporation.

§ 46. Corporate Stock When Paid.

12. The capital stock of a corporation may vary as to the times when and manner of its payment. In some localities part or all must be paid as a part of the corporate essential function, while in others it may be paid in after incorporation as well, and only in part if they wish, leaving the stockholder to owe the corporation for a balance on stock. The corporate creditors would have resort to this fund also. These funds, however, must not be diverted from the proximate purpose of the corporation, and any shareholder may interpose and stop a diversion of the corporate assets from the real object of the corporation, even though that diversion were authorized by a majority of the stock.

§ 47. State Interfere in Corporate Contract.

13. The corporate contract, being one with the State, it also may interfere if the corporation be one in which the public are interested.

§ 48. Creditors Come In.

14. The creditor may resist a misapplication of the corporate funds, as to him that is the only asset to which he has recourse.

§ 49. Corporation Can Not Dissipate Funds.

15. It would be most inequitable to allow the corporation to dissipate its funds in foreign enterprises and send its creditors out empty handed.

§ 50. Stock Character of.

16. A corporation may issue stock. Stock may be common, preferred, or guaranteed preferred. It issues its stock in payment for the property it acquires from its incorporators or otherwise. Stock is the evidence of its holder's interest in the company. Common stock is the ordinary stock issued by any corporation. Preferred stock is so called because it has some sort of an advantage over ordinary or common stock. Usually the preference is to participate in the dividends to a certain amount even though it takes the entire dividend or more to meet it. Preferred stock may be guaranteed to receive so much out of the dividend, and is then called guaranteed preferred. Such stock is sometimes issued to raise money rather than bond or mortgage. Some corporations have the charter power to issue preferred stock. If not, it is left to the stockholders, in which all must concur. Some courts hold the issuing of preferred stock is an incident to the right of the corporation to borrow money, especially when such stock is to be redeemed. These suggestions are not intended to be an exhaustive analysis of a corporation, but to show some of its principal features.

CHAPTER IV.

INCORPORATION ONLY BUSINESS INSURANCE.

§ 51. Advantages of Corporate Insurance Enumerated.

First: Your business is kept private, as the corporation is a distinct, legal existence in and of itself. It owns the property and the stockholder owns stock in the corporation as distinct from the property.

Second: It has "perpetual succession," which means if a member sell out or die the corporation's business is not disturbed, but goes on.

Third: It has potential perpetuity; that is, the stockholders may give it eternal existence by extending it before the time its limitation expires.

Fourth: It is optional with its members to terminate its existence. They may terminate the corporation any time and wind its affairs up.

Fifth: Private property can be exempt from corporate liability or debts.

Sixth: You may lose what you pay for the stock should the debts of the company become large enough to consume its assets, but no more.

Seventh: Upon a stockholder's demise, his stock descends to his heirs without disturbing the corporate status, under the laws of descent and distribution.

Eighth: Stockholders can insist on the business remaining within the limit of the charter, and can enforce that right by injunction against the majority.

Ninth: Stockholders may enforce rights that belong to it that the corporation or directors refuse to enforce.

Tenth: Its charter, or Articles of Incorporation, is a contract with the State, and this brings out the constitutional protection that the right of contract shall not be abridged but held inviolate, and hence no subsequent act of the State

can impair the charter matter, unless such right is reserved by the laws under which the corporation is formed.

Eleventh: It can do anything a natural person can do as to property.

Twelfth: No stockholder can dispose of the entire corporate property; he can sell only his stock. There is no hazard.

Thirteenth: No stockholder or other agent of a corporation can appropriate the funds of the corporation without being both civilly and criminally liable. A partner can sell it all and appropriate it without being criminally liable. Damages might prove fruitless, and all be lost. •

Fourteenth: It enables a large business to be carried on through agents.

§ 52. Incorporation Compared with Partnership, by Cook.

Mr. Cook on corporations states certain advantages which a corporation receives as compared with a co-partnership:—

“In large enterprises, the partnership has been found to be clumsy, dangerous, and insufficient. If unsuccessful, it brings ruin upon all of its members, because each partner is liable absolutely for all debts. Any member will bind the firm by his contract, and each one has an equal voice in deciding its policy. Its capital and credit, consequently its amount of business, are limited necessarily by the capital and credit of a very few men,—the members themselves. The death of a member or the transfer of his interests dissolves the firm. Any member may arbitrarily cause a dissolution at any time, and the insolvency of a member renders the partnership property subject to levy of execution for its debts.

“Upon the death of a partner, the surviving partners have the sole charge of winding up the business, and the executor of the deceased partner is not allowed to come in. A partner may withdraw his money only at a sacrifice or by long and expensive proceedings. He can not conveniently sell his interest or borrow money upon it. New partners can not readily or safely be admitted.

“The partnership is restricted in its capital, dangerous in its liabilities, narrow in its exclusion of new members, too free in its mode of making contracts, and too contracted in its opportunities for withdrawal. It is becoming obsolete as a mode of doing business on a large scale.

"In a corporation all of this is changed. The members are not liable for the debts. The amount already invested may be lost, but the private fortunes of the stockholders are not involved. The business is done and contracts made, not by all, but by a select few, called directors. A large capital is created by the union of funds from many sources. A person may safely invest in many enterprises and yet not take part in the business management nor watch the business of any one of them. The leading spirit in an enterprise may hold a majority of the stock and may admit associates, employees, or strangers as holders of a minority of the stock, and yet he will retain the management as though he were the single owner of the concern. Persons may easily buy into or retire from the enterprise. Dissolution is not brought about by the death or withdrawal or dissatisfaction of a stockholder. The insolvency of a stockholder does not effect the business of a corporation. Upon the death of a stockholder, his executor votes his stock and has a voice in the continuation of the business. A stockholder may sell or pledge his interest readily and intelligibly by reason of the reports, dividends, and market quotations of his stock. The corporation is a protection in that the liability is limited; it is capable in that it renders possible the collection of a great capital; it is efficient because the directors, and they alone, govern its policy and its contracts; and it is convenient because it is easy to sell or buy or pledge or bequeath one's interest in the concern."

§ 52a. Advantages of Incorporation by Quarterly Review.

The advantages of incorporation are set forth in the "Law Quarterly Review" for April, 1895 (p. 185), as follows:—

"Incorporation secures first of all the benefit of limited liability. It further preserves the continuity of the partnership unaffected by the death, lunacy, or bankruptcy of the members, or by other contingencies. It minimizes the dangers of a dishonest partner by restricting the agency of the directors in articles of which all persons dealing with the company have constructive notice. It facilitates dealing with the shares of the partners by sale, mortgage, or settlement. It affords greater facilities for borrowing, more particularly for raising money on debentures. A shareholder who lends money to the company is not at the disadvantage of being postponed to other creditors as an ordinary partner is who lends to the firm."

CHAPTER V.

ORIGINAL INCORPORATION OR INITIAL ORGANIZATION MEETING

§ 53. Lawful Purpose of Corporation.

From a legal standpoint, it may not be unwise to suggest that the corporation must not be illegal: (1) as against public policy; (2) in restraint of trade; (3) nor pertain to immorality; and whatever may be the terms of the charter or articles agreed upon, it must not be forgotten that the law under which it is to be created enters into it, governs and controls it just as much as if it had been written into it, for the reason that it being a contract it is on the same legal plane of any other contract in the eye of the law. In Arizona Territory and some other States, the only limitation is that the corporation must be created for a "lawful purpose."

§ 54. Voting by Incorporators or Stockholders.

Deliberative assemblies move and transact their business by and through the will of the assembled body. That will is ascertained by means of motions, resolutions, and various propositions submitted orally or in writing.

The will of the assembly is expressed by vote.

Voting is done in three ways:—

1. By show of hands or standing vote.
2. By the living voice, or *viva voce*, of the ayes and nays.
3. By ballot, this by means of writing the expression of the voters' desire on paper and handing it to the secretary, inspector, or teller.

In incorporations at the common law, one vote was allowed to each individual, regardless of the number of shares he owned.

Under our law it is the universal custom to follow the idea of majority rule, or the one who has the greater interest

vote all the interest that he has, hence the rule of voting according to the number of shares owned by a stockholder as representing the amount of interest held.

§ 55. Plan for Incorporation.

It is scarcely important to lay down any form of procedure by which the first meeting of those who desire to form a corporation is to be conducted, as the usual parliamentary law governing all deliberative bodies or assemblies is so well understood that it will be sufficient here to say that every assembly is a law unto itself, and can proceed under any code of parliamentary rules deemed necessary by it to its own control, or it can proceed without any rules, or they can talk the matter over in any manner they see fit.

§ 55a. Purpose of All Parliamentary Rules.

"The great purpose of all rules and forms is to subserve the will of the assembly rather than to restrain it; to facilitate, and not to obstruct, the expression of their deliberate sense."—Robert's Rules of Order, p. 125.

§ 56. Plan Suggested for Formation Meeting.

However, after the members who are interested have all gathered at the appointed place, and the time having arrived, some member may arise in his place or step to the front, and say: "The meeting will please come to order; I move that Mr. A. act as chairman of this meeting." Some one else may say, "I second the motion." The first member then puts the question to vote by saying, "It has been moved and seconded that Mr. A. act as chairman of this meeting; those in favor of the motion will say 'aye;'" and when the affirmative vote is taken, he says, "Those opposed will say 'no.'" If the majority vote in the affirmative, he says, "The motion is carried; Mr. A. will take the chair." If the motion is lost, he announces that fact, and calls for the nomination of some one else for chairman, and proceeds with the new nomination as in the first case until a chairman is chosen.

The above is purely formal, and may be dispensed with, and often is in the manner that some one simply arises and

announces that he appoints Mr. A. to act as chairman of the meeting. Mr. A., upon taking the chair, will in turn announce that he appoints Mr. B. as secretary, or Mr. A. may call upon the meeting to elect a secretary. In any manner that the meeting may see fit to proceed, its result will be that it begins its organization by a chairman pro tem and a secretary pro tem. The organization will now be ready for business temporarily. These two officers will constitute all the officers necessary for conducting the meeting. When the secretary is elected or appointed and installed with the necessary papers, etc., to enable him to take down notes of the proceedings of the meeting, he will usually take his seat near the chairman, so as to hear readily every step of the proceedings. This done, the chairman will ask, "What is the further pleasure of the meeting?"

§ 57. Object of the Meeting.

The first matter that will likely come before the meeting will be the object of the meeting. The chairman may state the object of the meeting or he may call upon some one to state the object of the meeting.

In the formation of corporations, it possibly will be so well understood among the members that the stating of the object of the meeting may be dispensed with unless it is the desire of the meeting to enter upon a joint discussion of the objects of the corporation they expect to form; or some member may want information in regard to the object of the corporation, or upon some question that is not quite clear to him or them. This, the object of the meeting once stated or understood and out of the way, the next matter logically in order for discussion will be to descend to the particulars that are to enter into the formation of the corporation proper, which usually are:—

§ 58. Initial Meeting Order of Business.

1. Its name.
2. Capital stock and capital.
3. Amount each shall subscribe, and how and when the

same shall be paid into the company, and form of subscription, or whether subscription is necessary as a "condition precedent" or not. If not, need not be in articles nor made.

4. Character of stock to be issued.

5. Term of the corporate existence.

6. Corporate seal.

7. Whether private property is to be exempt from corporate debts.

8. Place or places where principal office shall be kept and the business transacted.

9. Amount of indebtedness the corporation shall incur, if any.

10. Under the laws of what Territory, State, or country the company shall be formed.

These various heads will be discussed and minute entries made of the result of the deliberation, together with the reasons therefor, just the same as if the meeting had actually happened, and all matters pointed as a guide and an illustration for those desiring to form a corporation. It is not to be understood that the suggestions may not be varied to suit the wish, judgment, or convenience of the incorporators.

Some legal suggestions are made about each topic to better its understanding:—

§ 59. Secretary's Minutes of Formation Meeting, Form No. 4.

The plan of the secretary's minutes as here set out is not intended to be a set form of minutes, as the secretary can use any plan that he deems advisable, and this is only suggested as something to aid him in preparing his first minutes. The secretary can state in his minutes: First, "That at a meeting at the office of John Jones, Esq., 25 Canal St., St. Louis, Mo. (or wherever the meeting is held), for the purpose of forming a corporation, there were present Mr. A., Mr. B., Mr. C., Mr. D., and Mr. E."

Second, "On motion of Mr. B., Mr. A. was elected chairman. On motion of Mr. C., Mr. D. was elected secretary

pro tem.” (The members of the meeting then proceeded to discuss the formation of the corporation under the various heads above suggested.)

Third, “On motion of Mr. C., the meeting unanimously decided that the name of the corporation to be formed should be, ‘The Leap to Light Mining Company.’”

The above entries show only what was done, and this is usually sufficient, but if any matter of grave importance should come up, it may become proper to state what each member said. A like entry may be made by the secretary in his minutes when the assembly decide upon any matter. Simply state in plain and concise language, in condensed form, what was done or what was actually said and done, or the substance of what was said and done.

§ 60. Name of the Corporation.

A corporation being a person in law, like a natural person, must have a name, by which it is identified, known and transacts all its business. Sometimes there are statutory enactments regarding a corporate name, and if so, the statute of that State must be looked to in that regard. At common law, a corporation can not adopt the name, or substantially the name, of some other corporation chartered by the same State. Otherwise than this, the members of the corporation may choose any name that they see fit. When a name has once been selected, it can not be changed except by legislative sanction by an amendment to its charter or Articles of Incorporation.

§ 61. Capital Stock.

Fourth, “The capital stock of the company was decided to be 100,000 shares of the par value of \$1.00 each.”

The above quotation would cover what was done by the members, and will be a sufficient minute entry on the subject of “capital stock.”

The capital stock of a corporation is the amount subscribed in money, or any other kind of property, by those who take stock in the corporation. Subscriptions may be

taken at the incorporation meeting or subscriptions may be taken after the corporation is organized, or its stock may be sold for cash, or exchanged for property of any character, or labor, and whatever is received therefor will go into the corporation as its capital stock. The capital stock of a company will always remain the same, and should there be an increase in property of any character, the increase plus the original property received by the company will constitute its entire "capital," and in that, a distinction is drawn between capital and "capital stock."

The "capital" of the company may fluctuate, but the "capital stock" will remain the same.

§ 62. Amount Each Shall Subscribe.

The amount of the "capital stock" that each of the members shall subscribe will be designated by them in some manner, and whether subscribed before or after incorporation, the minute entry may be in the following form:—

§ 63. Subscription, Form of, No. 2.

St. Louis, Mo., Jan. 1, A. D., 1904.

Fifth, "We, the undersigned, hereby severally subscribe for and agree to take at its par value the number of shares of the capital stock of the Leap to Light Mining Company, set opposite our respective names, and agree to pay therefor in cash (or in whatever way they agree to pay) on demand of the treasurer as soon as said company is organized.

Name	Address	Shares	Amount
Mr. A.	St. Louis, Mo.	10,000	\$10,000.00
Mr. B.	San Francisco, Cal.	30,000	30,000.00
Mr. C.	Denver, Colo.	20,000	20,000.00
Mr. D.	St. Louis, Mo.	20,000	20,000.00
Mr. E.	St. Louis, Mo.	20,000	20,000.00

This form of subscription list is not a set form but may be varied to suit the subscriber, as there is no set form by which a subscription may be made. Subscriptions are a matter of contract between the subscribers to the corporation. If

this subscription contract is entered into before the corporation is formed, it will ripen into a contract with the corporation the instant the corporation is formed, and which contract may be enforced by the corporation only. It can not be enforced as between the members of the corporation, that is, one subscriber against another. If any member should fail to pay his subscription, the only way in which the contract could be enforced would be in the name of the corporation. If, however, the subscription is made after the corporation is formed, it is then a contract direct with the corporation, and is like any other contract, and becomes binding upon the parties the moment it is made or entered into.

A subscription to the capital stock of a corporation, either before or after incorporation, is distinguished from a sale of the shares. The purchaser of the shares at once becomes a stockholder, but he never becomes a subscriber. In the case of the subscription, if the corporation fails to issue the stock or tender the stock, this does not prevent the subscriber from becoming a stockholder with all the legal rights and liabilities of any stockholder, unless there is an agreement to the contrary. The sale of stock stands upon the same grounds as the sale of any other property, and tender of the certificates must be made to the purchaser in order to maintain an action for the price. Various forms of subscriptions are made, but it will be found that they are all contracts, and, like any contract, rest upon the intention of the parties to the contract, and when there is sufficient in the manner of subscription to show the intent of the parties, it will be sufficient in form that the contract may be enforced or it may be entered into by parol, or if one merely takes the stock without anything being said about subscription, he is liable without subscription.

§64. Character of Stock to be Issued.

The character of stock to be issued is one of the features to be discussed and determined by the members of the incorporation meeting. Corporate stock or shares are either common

stock, preferred stock, watered stock, deferred stock, over-issued stock, or special stock.

§ 65. Common Stock.

By common stock is simply meant the stock which entitles the holder to a *pro rata* division of the profits of the business or assets upon dissolution, if there be any, and entitles the shareholder to no preference whatever in any manner over any other shareholder.

§ 66. Preferred Stock.

By preferred stock is meant that the preferred stockholder has a preference in regard to the dividends out of the net profits, before or in preference to the common stockholder. It may be that the preferred stockholder is to receive a certain per cent upon the amount of his shares. This will have to be paid to him regardless of whether the common stock receives any profit or not out of the business of the concern, or there must be an advantage in some regard in favor of the preferred stock before it is or can be "preferred stock," as its name implies.

§ 67. Watered Stock.

By watered stock is meant stock which is issued as fully paid, but in fact the full amount has not been paid, and the difference between what was actually paid for the stock and the face of the stock is the amount of water that will be contained in the stock. For instance, if shares are issued as fully paid of the par value of \$1.00 and only \$0.50 per share is paid by the shareholder, then the stock is watered to the amount of the other fifty cents, and this would be true whether the stock was paid for in property or labor or in anything that the company received for its stock at an over-valuation. The issue of such stock, however, appears to be lawful, if there is any substance in it whatever, otherwise it would be spurious.

§ 68. Deferred Stock.

By deferred stock is meant the payment of interest upon which is expressly postponed until some other stock has re-

ceived a dividend, or until some contract of the corporation has been paid out of the net profits of the company's business.

§ 69. Over-Issued Stock.

By over-issued stock is stock issued in excess of the full amount of capital stock authorized by the corporation. Such stock, representing nothing, is spurious stock and void, though it may have been issued in good faith.

§ 70. Guaranteed Stock.

There is another class of stock denominated guaranteed stock. This is a common form of transacting business at the present time, and is usually stock issued by one corporation, the payment of which at a certain specified time in the future is guaranteed by another corporation, which other corporation receives a certain per cent of the sale of the stock to remain with it for that purpose. It will be before the incorporation meeting to decide which character of stock they will issue, whether one or more of the kinds here designated. Some corporations issue common stock and preferred stock both; some issue common stock, and with the sale thereof give a bonus. Stock at the present time are almost all of about the same form. They are of steel engraving, with appropriate words engraved and printed therein, and present a very beautiful appearance. However, if the company should desire a finer stock, which, it appears, will sell better and which are in more demand by the public, they may procure a special, lithographed design.

Sixth: The secretary's entry upon this topic may be as follows: "Upon a full discussion among all the members, it was decided to use the 'steel engraved' design of stock, and to issue 50,000 common and 50,000 preferred stock, the preferred to receive five per cent annual dividend out of any earnings of the company;" or, "it was decided to issue 100,000 shares, common stock."

§ 71. Term of the Corporate Existence.

The time that corporations are to exist vary under the

different laws of the different States where the corporation is to be created, and the time or duration of the corporation will turn upon the place where and the laws under which the corporation is to be formed. That being settled as a matter of law, the law will decide it. In Arizona a corporation may be formed for twenty-five (25) years, and extended by a majority vote of the stock on and on for twenty-five (25) years at a time perpetually.

Seventh minute entry may be, "It was decided to incorporate under the laws of Arizona for a term of twenty-five (25) years."

§ 72. A Corporate Seal.

The seal of a corporation is its proper signature. It is the means by which it authenticates its contracts. It is, however, at the present time necessary to use a seal only upon such contracts as an individual would use a seal, such as deeds, mortgages, and instruments to be recorded. A corporation may contract, however, without a seal by means of resolutions or through its agents. The seal, as the enlightenment of the human race passes on, becomes less in importance, and the form of the seal varies with the notion of those who created it. It may bear any words or designation that the members decide upon, and when it is necessary to affix the seal of the corporation to any instrument, it is usually along with a testimonium clause, which may be in the following form:—

§ 73. Testimonium with Seal No. 3.

In witness whereof, the said Leap to Light Mining Company has caused its corporate name to be hereto subscribed by its President, and its duly attested corporate seal to be hereto affixed by its Secretary. All in the city of Minneapolis, Minn., on the first day of March, A. D. 1904.

(Signed) Leap to Light Mining Company,
By Wm. A. Brown, President.

Attest: (Seal)

Henry Smith, Secretary.

A deed may conclude with the words: "In testimony

whereof the common seal of said company is hereunto affixed."

Bason vs. King's Mountain Min. Co., 90 N. C. 417.

**§ 74. An Approved Form of Attestation of a Corporation,
Form No. 4, Is:—**

In witness whereof, the said party of the first part has caused its corporate seal to be affixed hereunto by its Secretary, and its name to be subscribed hereto by its President (or other corporate officers, as the case may be), the day and year aforesaid.

(Seal.)

(Signatures as above.)

Eighth minute entry may be: "It was decided to have a corporate seal, circular in form, containing the word 'Incorporated,' the date of the year of incorporation, with the name of the corporation inscribed within its outer border."

§ 75. Private Property Exempt from Corporate Debts.

Under some of the statutes now in force in the various States, it is within the power of the formers of a corporation to exempt their private property by the terms of the charter or Articles of Incorporation from any corporate debt. This is a very beneficial authority, and it is one of the features of the Arizona law that recommends it to those who desire to exempt themselves from liability, and exempt their private property from liability when they engage in the formation of a corporation.

With a clause in the charter stating that private property is exempt from corporate debts, a stockholder ventures nothing more than just what he pays for the stock. He could lose no more should the corporation fail.

Ninth minute entry: "It was decided that private property should be exempt from corporate debts."

§ 76. Place Where Business Should Be Transacted.

The place or places where the corporate business is to be transacted is usually designated in the charter or Articles of Incorporation, and this will be one of the matters for discussion by the meeting. At the present time it is very fash-

ionable, and highly proper also, that parties who live entirely without a Territory, State, or country, to form corporations in such foreign State or country, and, in that case, they usually desire to transact their business at their own home or at a city designated in their own State, to the entire exclusion of the transaction of any business in the State or country where the corporation is formed, and in such case, the question arises as to their principal place or places of business.

If it is a "condition precedent," or in other words, it is a statutory requirement that the company shall designate its principal place or places of business, then such matter must be stated in the charter or Articles of Incorporation. If, however, it is not a condition precedent, it then becomes a mere matter of business for the corporation, then it will fall to a place in the by-laws where the place of business may be stated. In the first case, if it is a condition precedent, then the company will be compelled to designate their principal place of business in the State, as well as their principal place of transacting without the State or Territory, in the charter or Articles of Incorporation, otherwise they need not designate their place of business or discuss it in the first meeting, but can leave it to be declared by the stockholders or board of directors, or whoever prepare the by-laws.

Tenth minute entry: "The places at which the corporation was authorized to transact business was at Phoenix, Ariz., and at Minneapolis, Minn., and at such other place or places as the board of directors might from time to time, by a resolution, designate."

§ 77. Amount of Indebtedness Corporation Shall Incur.

The indebtedness of a corporation also is like its place of business. If the company is required by the laws of the State or country where the corporation is formed to state its indebtedness or the amount of its indebtedness as one of the conditions precedent to its formation, then it will be compelled to state that indebtedness in the charter or Articles of Incorporation; and if this question arises in that manner, it

will then be a question for the preliminary formation meeting how much indebtedness their company will be subjected to, and, unless the statute so provides, there is no set amount of indebtedness to be decided upon, but that will be left to the discretion of the incorporation, wherever they put it; beyond that they will not be entitled to go, and if they desire to incur further indebtedness than that set forth in their charter or Articles of Incorporation, they will have to reach the point through legislative enactment by an amendment to the charter.

Eleventh minute entry: "The amount of indebtedness the company shall incur at any one time shall not exceed one-half of its capital stock."

§ 78. Under What Law the Company Shall Be Formed.

This subdivision is a very important feature for consideration. It goes toward the financial affairs of the corporation, the costs and the expenditures attending the incorporation, the advantages to be obtained under the various laws and enactments of the various States. It will be worthy of the careful consideration of the preliminary meeting to know where they can receive the greatest advantages at the least possible expense, with the most proficient skill in the preparation of the charter or Articles of Incorporation.

In order to obtain this information, it will be necessary for them possibly to enter upon a wide field of investigation, resort being had to law books, lawyers, and experience in that line from whatever source it may come.

Each State in the Union has general laws upon the incorporation of individuals into corporations. They each have their various fees in the first instance, their taxes, known as organization taxes, franchise taxes, inheritance taxes, and other things that each of them requires of the incorporators, afterward such as annual reports, of where stockholders' meetings are to be held, whether there must be citizen directors, and the like, all more or less impediments to be carefully considered.

It would be an endless and unnecessary inquisition in this work to set out the particular requirements of each State in the Union, there being forty-five States and five Territories, whose laws would have to be compared and explained, and would further make a volume far larger than this work is intended to be to state or set forth the comparative advantages and disadvantages as found in the various general laws of each and every State and Territory of the Union.

§ 78a. Comparison of the Disadvantages of the Laws of the Leading Corporation States.

As much as can be done or as much space as the incorporators would canvass possibly would be the laws of the leading incorporation States and Territories in the Union, which in all comprise less than a dozen; anything more would result in confusion and serve no useful purpose.

All the States that still retain the chartering of companies through their Legislature only will be eliminated from our consideration.

It is the right of every citizen to incorporate his company where it is most advantageous to him and his co-incorporators.

As a citizen of the United States, he has a right to resort to the laws of every State and Territory of the Union in search of such beneficial features as appear to his judgment to be suited to his enterprise, to his condition, and to that of his fellow incorporators.

As a citizen of a great country, he has the right to do business in the whole United States, the eighty million people thereof being his market, having no greater right to sell to his nearest neighbor than he has to the most remote citizen from his home, and this right exists regardless of imaginary boundary lines of commonwealths.

A sharp competition has arisen, and is now going on, among the leading incorporating States, vying with each other for the corporate business in order to secure the charges and taxes accruing to the State for incorporation of companies, and thus enrich their treasuries from incorporators

without the State in order to militate to the benefit of the citizen taxpayer within the State.

The truth is, the laws of the various States are being changed so rapidly that the result of an investigation and classification at this time might not serve as a very reliable source of information after the Legislatures meet in the various States the next session.

With this view before us, we will cut our investigation or analysis down to the consideration of the disadvantages only found in the laws of the States from the standpoint of an incorporator who seeks the greatest liberality at a minimum cost and liability.

Having examined all of the States that offer incorporation under general incorporation laws or enabling acts, we select as the leaders those States and Territories that seem to be doing the volume of business at the present time, to wit: Arizona Territory, District of Columbia, Maine, Massachusetts, Connecticut, New York, New Jersey, Nevada, Oregon, West Virginia, South Dakota.

These localities will be compared under two heads, limiting the inquiry to the matter expressly found upon the face of the incorporation acts, omitting the liabilities that may result from the extraordinary remedies of attachment, etc., and other matters of practice before the Courts.

1. The disadvantages.

2. The liabilities, costs, etc., for a million-dollar corporation.

§ 79. Arizona Territory.

The only objection raised by any lawyer that we know of is that Arizona, being a Territory, suits could not be brought in the federal courts in the first instance, and the reason given in each instance why it was desired to sue in the federal courts was and is that the federal courts are more favorable to corporations than State courts. In other words, corporations could not get justice in the State courts.

We take issue with this contention as not well taken.

First, Because the company is drawn away from its home, and the expense is greater in attending the suit in the federal court.

Second, The company is called away from its home and its influence with home juries and its own friends at court, and its case is weakened.

Third, It being true that you can not sue, it is also true that you can not be sued and dragged away from your home and friends by those who wish to get such an advantage over you in a suit, but they must sue you at home, where your influence and standing in the community is the greatest.

Second issue, of the favor of federal courts toward corporation, we deny that in substance and in fact.

First, Because there is now no prejudice among the several States toward corporations, for the reason that corporations are so well understood that everybody is now incorporating, as the records of the States and Territories show that more than 30,000 companies are being formed each year, and they represent on an average of more than five people each, aggregating in twenty years more than three million active business men engaged in business under corporations.

Second, Because the States are sharply competing for the corporation business.

Third, Because the judges of the various States are not unmindful that they must give the corporation a fair deal, or they would drive not only the State's corporation business away, but drive out of their State the active tax-paying business men as well.

Fourth, Because it is assuming that the State judges are not fair and impartial jurists, a fact that has never been proved, nor can it ever be proved.

Fifth, Because all the federal judges have been selected from among lawyers and judges of the States, and it is difficult to understand how a man could be prejudiced against corporations as a judge of a State, and reverse himself instantly upon being appointed a federal judge.

It is also suggested that Arizona being at such a great distance from the East, it is objectionable on that ground. Just how such ground is tenable is not perceptible, as it is no farther from the East to the West than from the West to the East, and, inasmuch as the entire business is done through the mail, there are no greater costs attached than though Arizona was an adjoining State. All the business of the corporation is done at the home of the incorporators or where they designate.

LIABILITIES, COSTS, ETC.

The approximate costs of incorporating a company in Arizona Territory for a million dollars or any amount is about \$50. This sum pays all the fees of the Territory, as well as solicitors' fees.

The liabilities of stockholders are left to the incorporators if they exempt their private property from corporate debts; by the Articles of Incorporation their private property can not be reached for the debts of the corporation.

Session Acts 1903, p. 140, Sub. 7.

It is also required to maintain a domiciliary agent for service of process.

Revise Stat. Ariz. 783.

There are no restrictions upon the action of incorporators under the laws of Arizona Territory; corporations are left as free to act, contract, and operate, own and control property as a natural person; that is one of the powers expressly granted corporations by statute.

Revised Stat. Ariz., par. 765, Sub. 6.

The Supreme Court of the United States, the court of last resort for Arizona Territory, holds that a corporation can do any act not inhibited by statute.

Handley vs. Stutz, 139 U. S. 417.

The corporation being operated by natural persons, for natural persons, where is there any reason why their limit in

business should be any less in breadth than a natural person, within the powers secured in the Articles of Incorporation.

§ 80. District of Columbia.

The disadvantages in using the laws of the District of Columbia are as follows:—

1. No less than three can incorporate.
D. C. Code 605.
2. Can not deal in stock of other corporations
D. C. Code 620.
3. Only one business can be inserted in the Articles of Incorporation.
D. C. Code 612.
4. Ten per cent of capital must be paid in before company can begin business.
D. C. Code 613.
5. Forfeiture of stock for non-payment of assessments.
D. C. Code 607.
6. There can be no less than three directors nor more than fifteen, a majority of which must reside in the District of Columbia.
D. C. Code 608.
7. Must make affidavit within thirty days of the amount of capital stock fixed and paid in.
D. C. Code 616.
8. List of stockholders within six months must be kept on file in the District of Columbia.
D. C. Code 627-628.
9. Annual report must be made and published, showing the amount of capital, amount paid in, and its debts.
D. C. Code 617.
10. Annual schedule must be filed showing personal property in District.
32 C. C. D. 617.

LIABILITIES, COSTS, ETC.

Recorder's fees, fifty cents for first two hundred words of the Articles of Incorporation, fifteen cents per hundred thereafter; twenty-five cents for each acknowledgement over one; twenty-five cents for certificate and seal. Since the above fee bill was enacted, Congress has passed an act raising the fees to forty cents per thousand, so that a million-dollar corporation would cost not less than \$400. How many more embargoes laid by the act is unknown to us, as the act has not yet been published.

This large fee, coupled with the other restrictions, put the District of Columbia out of consideration as a place to incorporate.

§ 81. Maine.

The disadvantages under Maine laws are as follows:—

1. Not less than three can incorporate.

R. S. Maine 1894, chap. 47, sec. 6.

2. Has a complex certificate of organization, which must be approved by the attorney general.

Secs. 3, 4, 6, 7, 8, 9, 10.

3. First organization and directors' meetings are required to be held in the State.

Laws of 1903, chap. 182; Freeman vs. Company, 38 Me. 343.

4. Stockholders must hold meetings within the State.

Secs. 11-19.

5. Must keep books in State open for inspection.

Secs. 19-21; secs. 3-20.

6. Must make annual sworn statement and file it with secretary, showing names and residences of president, treasurer, directors, and clerk, location of its principal office in State, and amount authorized capital stock.

Sec. 26.

7. Forfeiture of articles for failure to pay the annual franchise within one year from due.

Chap. 8, secs. 21, 22; chaps. 1-29.

8. Existence can not be extended.

LIABILITIES, COSTS, ETC.

Organization tax, \$10, where capital stock is \$10,000 or less; \$10,000 to \$500,000, \$50 tax; and \$10 additional for each \$1,000 capital stock in excess of \$500,000. It would, therefore, cost \$550 for a million-dollar corporation. Aside from the attorney general's fee of \$5.00, recording certificate of organization and certified copy, \$5.00; secretary's fee, \$3.00; making a total to start of \$570.

This does not include the annual franchise tax of \$50 for a million-dollar concern.

The excessive fees and taxes, coupled with the forfeiture for non-payment, with no rights of stockholders to meet outside of the State, eliminates Maine from our consideration as an incorporation State.

§ 82. Massachusetts.

The disadvantages here are as follows:—

1. Real estate can not be incorporated.

Laws 1903-437.

2. No less than three can incorporate.

Sec. 7; Walwirth vs. Brackett, 98, Mass. 98.

3. Complex agreement of association. Par of stock can not be less than \$5.00; must be submitted to a corporation commissioner who must approve of the agreement, and he can amend, or the commissioners may inquire into the organization.

Secs. 8, 9, 10, 11, 12; Bird vs. Daggett, 97 Mass. 494.

4. Full exposure of all the transaction of the company must be spread out on the record in the articles of organization

Sec. 11.

5. Organization meeting must be within the State.

Secs. 9, 10, 20.

6. Stockholders' and directors' meeting must be held within the State.

Laws 1904, chap. 207, secs. 20-25.

7. The president must be elected from the board of directors.

Sec. 18.

8. Stockholders are personally liable for loans to the corporation; also for contract during certain periods of time.

Secs. 34, 35; *Cole vs. Cassidy*, 138 Mass. 437.

9. Two annual reports must be made, one to the commissioner, making a complete breast of the entire workings of the corporation, which must be filed, even to the pledging of the corporate stock.

Secs. 45-50.

10. Charter may be forfeited for usurpation of franchise or privileges or for failure to pay annual franchise tax.

Secs. 49, 78; chap. 186, sec. 1724 P. S.

LIABILITIES, COSTS, ETC.

1. Organization tax, twenty-five cents per \$1,000 capital stock, and in no case less than \$10.

2. Certified copy of articles, \$5.00.

3. Franchise tax of not less than one tenth of one per cent of the market value of its capital stock. ' However, this tax may be much more; no limit.

Secs. 74, 76-87; Laws 1904, chaps. 225-445.

The cost of a million-dollar corporation in Massachusetts would be not less than \$250 for organization, with not less than a \$1,000 per annum franchise tax.

The fees taken in consideration with the complexity of the corporate minutia, together with the publicity that must attend the annual reports eliminate Massachusetts from consideration as a corporation State. The requirements appear to be so strict that the stockholders would have to keep coun-

sel for no other purpose than to keep them out of the meshes of the law.

§ 83. Connecticut.

The disadvantages of incorporating in Connecticut are as follows:—

1. All meetings must be held within the State.

Conn. Cor. Law, sec. 22.

2. Must pay \$1,000 in before commencing business.

Conn. Cor. Law, sec. 63.

3. No less than three directors.

Conn. Cor. Law, sec. 10.

4. No less than three can incorporate.

Laws 1903, chap. 194, sec. 62.

5. Shares can not be less than \$25 each.

Sec. 63.

6. Certificate of incorporation must be approved by the secretary of state.

Secs. 60-66.

7. Stockholders' meetings must be held within the State.

McCall vs. Com. 6, Com. 428, secs. 3, 22.

8. Annual report must be filed with secretary.

Sec. 37.

LIABILITIES, COSTS, ETC.

Minimum fee is \$25, with fifty cents per \$1,000 up to \$5,000,000, and fifteen cents per \$1,000 over that amount of capital stock, which would amount to \$500 for a million-dollar company, together with \$1.00 to secretary for each of the papers, certificate and organization for recording, and \$1.00 for recording in the local office.

Sec. 61.

The large fee, in consideration with the other serious objections to the operation of a corporation in Connecticut,

eliminates it from the consideration of an incorporating State.

§ 84. New York.

The disadvantages of incorporating in New York are as follows:—

1. Doubt about holding stockholders' meetings out of the State.

Ormsby vs. Cooper Co., 56 N. Y. 623.

2. Five hundred dollars must be paid in before any debt can be incurred.

B. C. L. 1890, secs. 2, 3, 5.

3. One-half the capital must be paid in within the first year.

N. Y. S. C. L. 1890, sec. 42.

4. Not less than three can incorporate.

B. C. L., sec. 2.

5. Two-thirds of the incorporators must be citizens of the United States.

G. L. C., sec. 4.

6. At least one incorporator must reside in New York, and at least one director must reside in New York.

N. Y. B. C. L., sec. 2.

7. Must keep at office in the State, book of accounts open for inspection of stockholders and creditors.

S. C. L., sec. 29.

Matter vs. Steinway, 159 N. Y. 250, 53 North Eastern 1103.

8. Annual report must be filed with secretary of all the business, signed and sworn to, and on failure a penalty of \$50 per day is incurred, so long as report is delayed.

S. L. C., sec. 30; Tax Law, sec. 189.

9. Certification of incorporation may be forfeited.

(a) For failure to organize and begin business within two years.

(b) For failure to pay in one-half of capital stock in one year.

(c) For failure to pay the annual tax within one year after statement rendered.

G. C. L., sec. 31; C. C. L., sec. 5; Tax Law 200; C. C. P. 1797-1803; *Day vs. Company*, 107 N. Y. 29; 13 N. E. 765; *People vs. Company*, 131 N. Y. 140; 29 N. E. 947.

LIABILITIES, COSTS, ETC.

1. Stockholders are liable personally for certain debts of the corporation.

S. C. L., secs. 54, 55; B. C. L., sec. 6.

2. Fees: Secretary, \$10 for filing certificate; fifteen cents per folio for recording certificate; to county clerk filing, six cents; and ten cents per folio for recording, with one dollar for the great seal.

3. Organization tax, fifty cents per one thousand of capital stock, as shown by the certificate of incorporation.

Tax Law, sec. 180; Laws 1901, 448.

4. Franchise tax if one fourth of a mill on the dollar on the dividends of six per cent or over; declared on less than six per cent, one and one-half mills; if no dividend is declared, then one and one-half mills on the appraised value in state for industrial corporations.

Tax Laws, secs. 182, 183, 189, 190.

5. Has also a direct and collateral inheritance tax on stock. 55 AM. State, Rep. 632-640; 34 Lawyer Rep. Annotated 232-238; *In Re Bronson Est.*, N. Y. 1-27, 44 N. E. 707-715.

It would cost about \$525 to incorporate in New York, with yearly tax afterward of possibly about \$1,500 per annum.

Considering the large fees and taxes, coupled with the stringent requirements of law, none but a very wealthy class of corporations could exist in New York, hence it must be eliminated as an incorporating State.

§ 85. New Jersey.

1. No less than three can incorporate.
L. 1896, chap. 185, sec. 6.
2. Requires subscription of \$1,000 before incorporation will be allowed to begin business.
Secs. 25, 26.
3. One thousand dollars in value must be paid in before debts can be incurred.
Secs. 25, 26.
4. Organization meeting must be held within State.
Sec. 115
5. Stockholders' meetings must be held within the State.
Act. sec. 44.
6. Minimum number of directors is three, one of whom must reside in State.
Secs. 12, 36, 39.
7. Directors liable for loans to stockholders.
Secs. 55-92.
8. Transfer book and stock book must be kept in the State.
Sec. 33.
9. Must make annual report to secretary, disclosing its business.
Laws 1898, p. 140, sec. 43.
10. Charter forfeited for failure to comply with order of court requiring production of books or its failure to pay its annual franchise tax.
Law 1896, sec. 44, p. 319; Laws 1904, chap. 219.

LIABILITIES, COSTS, ETC.

1. Fees to secretary, \$1.00, and ten cents per folio for recording charter; to county clerk for recording, ten cents per folio.

2. Organization tax: Minimum, \$25, with twenty cents per \$1,000 capital stock authorized.

Law 1904, 148.

3. Annual franchise tax of about \$1,000 per annum.

Laws 1901, 31.

A million-dollar corporation would cost about \$225 to begin with, and about \$1,000 annual franchise tax.

Considering the large fees and taxes, it is apparent that New Jersey must be eliminated as a corporation State.

Evidently her laws were made with a view of excluding the man of ordinary means.

§ 86. Nevada.

Nevada Corporate Act of 1905 is a confusion of inconsistent provisions; it does not follow the common law nor the law of any State; it certainly was not prepared by a lawyer or any one learned in corporate law.

1. No less than three can form a corporation.

2. No more than one business can be incorporated. "Any lawful business," not businesses for "any object or purpose" not objects or purposes.

Sec. 1, Act March 16, 1905.

3. Section 2 proposes to spawn insurance companies to infest other states, that Nevada will not tolerate, but they must "operate wholly without this State." Intolerable corporations are no more appreciated outside than in Nevada.

4. Sec. 3 proposes to allow corporations to form for "any one or more of the purposes specified in this act." As Sec. 2 is the only section specifying any purposes, and that specifies life, fire, marine, or accident insurance companies, it is presumed this section refers to corporations that are to operate wholly outside, without the right to operate within the State.

5. Sec. 4, Sub. 1. The corporate name must be such as to distinguish it from all the corporation as "condition precedent" in the first instance. If its name should fail to distinguish it from some other, due incorporation is not reached.

6. Sec. 4, Sub. 2. The articles must specify the street and number of the corporate place of business as one of its conditions precedent, and should the company desire to move its office, it must amend its Articles of Incorporation to do it, and pay the secretaries' fees again for a license to be a corporation in another place, even the next door to its original place of business, or it must proceed under Sec. 69, and be subject to newspaper graft and other fees.

7. Sec. 4, Sub. 3 requires "the nature of the business or objects or purposes to be transacted" to be "set forth;" if followed to its result, would reach a voluminous statement; being a condition precedent, it must be satisfied and how? The nature of the business must be stated, but whether general or special, or both, is not pointed out.

8. Sec. 4, Sub. 4 requires no less than \$1,000 before business can be commenced; subscription to stock to be put into the articles and "terms on which the stock are created," and various other requirements or conditions precedent, must be carried out to be legal, would of itself make a ponderous document.

9. Sec. 4, Sub. 5 is an onerous provision.

10. Sec. 4, Sub. 6 is a wise provision.

11. Sec. 4, Sub. 7 is a useless requirement.

12. Sec. 4, Sub. 8 lays an embargo on the right to raise capital by assessment, if desired.

13. Sub. 4, Sec. 9 refers to powers, but whether such reference is to the powers as measured by the charter or to the powers granted by the statute by Sec. 7, is not distinguished or defined; it is left to conjecture. Inasmuch as the corporation "may" or "may not" do the things pointed out, it is optional with the company, and not condition precedent, and may be disregarded entirely. Certainly it can not overbear statutory requirements.

14. Sec. 5 places incorporations within the grasp of the secretary of state; whether or not the incorporators would have "the required statement of facts" could depend on the

scruple of the secretary of state. He could reject proper articles and pass improper. He could favor this lawyer and refuse another. He could reward his friends and punish his enemies. He could exact tribute of one and all. He is the czar that wills corporate life in Nevada. Nothing short of the extraordinary writ of mandamus could reach him, and having a discretion as to whether the "required statement of facts" were incorporated or not, places him beyond the reach of mandamus.

15. Sec. 7. Powers granted by this section are not like the powers at common law; they contain no express power to make contracts generally respecting all property,—real, personal, and mixed,—but appear to limit the transactions of the company to specific designations set forth respecting real and personal property, only without extending even such limited rights to mixed property. There is no provision empowering the stockholders to exempt themselves from corporate debts.

16. Sec. 8 concerns the issue of money, which is inhibited to corporation other than national banks by the statutes of the United States.

17. Sec. 9 is a limitation on the corporation to the particular powers granted by the act and such "incidental powers as shall be necessary to the exercise of the powers given." These incidental powers are such as every corporation has already by reason of its existence, as, of course, to carry on its business, and is a mere superfluity in a statute.

17. Sec. 10 is a singular statement, a seeming limitation inconsistent with Sec. 4, Sub. 4, descending to mere by-law matter of the company.

18. Sec. 11 is more mere by-law matter.

19. Sec. 12 is by-law matter.

The entire act has 114 sections, and has the trick of "cumulative voting" (see Sec. 20), and a new way to incorporate (Sec. 49), and abounds in other anomalous uncertain provisions upon the power of a court of equity. Enumerations

of mere by-law matter and many other inconsistent irreconcilable statements impossible to be analyzed or attempted to be reconciled in a small work like this.

LIABILITIES, COSTS, ETC.

For a million-dollar corporation it would cost \$100; to secretary's agent, \$1.00, making \$101; this does not enumerate the fees of the county clerk, which will amount to \$10 or \$15 more. It is safe to say no less than \$125 for fees alone would satisfy the laws of Nevada, besides the solicitor's fees, agent's fees, etc.

These fees, together with the provisions of the statute, eliminate Nevada entirely out of consideration as an incorporating State.

§ 87. Oregon.

The disadvantages of incorporation in Oregon are as follows:—

1. Not less than three can incorporate.

Annotated Code Statutes 1902, sec. 5052.

2. One half of the capital stock must be subscribed before any business can be transacted.

Sec. 5057.

3. Organization meeting must be held within the State.

Sec. 5058.

4. Can not elect directors until one-half capital stock is subscribed.

Sec. 5057; 47 Pac. 789; 48 Pac. 474.

5. Stockholders' meetings must all be held in the State.

Sec. 5062; Doernbecher vs. Company, 28 Pac. 899.

6. Directors must be stockholders, and a majority must reside in the State and take an oath of office.

Sec. 5059; Silsby vs. Strong, 38 Ore. 36, 62 Pac. 633.

7. Directors are liable for illegal declaration of dividends and for withdrawal of capital.

Sec. 5666; *Patterson vs. Thompson*, 86 Fed. 85, 90 Fed. 647.

8. All books of corporation must be kept within the State and be open to inspection.

Sec. 5063

9. Annual sworn statement must be filed with the secretary, disclosing the workings of the company.

Act. 1903, sec. 5.

10. Charter forfeited for abuse, misuse of corporate power, failure to elect directors and commence business within a year, and the right to do business abates so long as the franchise tax is unpaid.

Sec. 5067; *Laws 1903*, p. 39.

11. No provision for extension of duration of corporate existence.

LIABILITIES, COSTS, ETC.

1. Organization tax increases according to the capital stock; a million-dollar concern would cost \$75.

2. County clerk's fee is \$1.25 for recording articles.

3. Annual license fee (or franchise tax) is also apportioned according to the capital stock.

4. A million-dollar concern would cost \$125 license tax per annum.

A million-dollar corporation would cost over \$200 to start in with, with \$125 license tax thereafter; so that, considered in connection with the very stringent requirements of the law over the working operation of the company, eliminate Oregon from consideration as an incorporation State.

§ 88. West Virginia.

The disadvantages of incorporation in West Virginia are as follows:—

1. Real estate corporation can not be incorporated.
Code of W. Va. 1899, sec. 52; Laws of 1901, chap. 35;
Laws 1903, chap. 3.
2. No less than five persons can incorporate.
Secs. 54-56.
3. Annual reports must be made, under penalty.
C. W. V., chap. 53, sec. 46; Laws 1901, chap. 35.
4. Forfeiture of charter may be had for failure,
 - (a) To have five directors.
C. W. V., chap. 53, sec. 17.
 - (b) To pay license tax.
Laws 1901, chap. 35; 1903, chap. 4, sec. 7.
 - (c) Suspension of business for two years.
 - (f) To organize and commence business in two years.
Laws 1901, chap. 35.
 - (g) Misuse or abuse of charter rights.
Chap. 109, secs. 6-12.
 - (h) To appoint resident agent.
Chap. 54, sec. 24; Constitution, art. XI, sec. 4.
5. Cumulative voting is a law of the Constitution.
Code chap. 5, sec. 44; Cross vs. R. R., 35 W. Va. 175.
6. Action of majority of directors valid without notice to the minority.
Acts 1901, p. 100, chap. 35, sec. 6.

LIABILITIES, COSTS, ETC.

1. Organization tax for a million-dollar concern is \$450; recording cost about \$12.
2. The annual franchise tax is about \$410; there is in addition to this a collateral inheritance tax.
3. A penalty of \$5.00 after September 1, with one per cent added and cost of publication for failure to pay license tax when due.
Chap. 19, sec. 4.

For a million-dollar corporation the cost would be about \$460 to begin, and not less than \$400 per annum thereafter, saying nothing about the collateral inheritance tax.

The laws of West Virginia were evidently prepared to bid for the incorporation business of large companies in the East; while there are few objections to the laws, and those not of a serious character, still the fees are such that for the ordinary venture company it must be eliminated as an incorporation State.

§ 89. South Dakota.

The objections to the corporation laws of South Dakota are as follows:—

1. Not less than three can incorporate, one third of whom must reside in the State.

Revised Civil Code S. D., sec. 407; Singer Mfg. Co. vs. Peck, 9 S. D. 29-67, N. W. 947.

2. Two of the incorporators must make the anti-trust affidavit under penalty.

Secs. 410, 411; Penal Code 781.

3. Corporate power ceases unless business is begun within one year.

Secs. 411, 2905.

4. Must provide for holding meetings without State, otherwise the right does not exist.

Secs. 780, 3114, 440, 2932.

5. One third of the officers must be residents of the State.

Secs. 434, 2926.

6. Directors must be stockholders, one third of which must reside in the State.

Secs. 434, 2926.

7. Directors are liable by statute for unlawful withdrawal of capital, for creating debts beyond the capital stock, for rendering corporation insolvent, and if it can be shown that directors assented to violation of law for fraudulent appro-

priation of property or failed to file annual reports, or false statement in annual report, they are jointly and severally liable for all the corporate debts. (This liability might engender a multiplicity of suits against the directors.)

Secs. 431, 2933, 784.

8. Stockholders are individually liable for all labor claims contracted by the corporation.

Secs. 783, 3111.

9. Books must be opened for subscription to stock. which subscription must be in full.

Secs. 421, 2913.

10. Sworn annual reports must be made, published, and filed with the register of deeds where the business is transacted in the State.

Sec. 784.

11. Neglect to sign, file, and publish annual report is guilty of a misdemeanor.

Sec. 3112.

12. Cumulative voting allowed.

Constitution S. D., art. 17, sec. 5.

(This is a legal embargo on the right of the majority rule.)

13. Corporate stock is taxed like other property of the State.

14. Forfeiture of charter may be had on divers and sundry grounds of unimportant character.

Secs. 447, 2939, 571, 5346.

15. Legislature has power to inquire into corporations and annoy them; it is an *ex parte* examination, to which there is no defense.

LIABILITIES, COSTS, ETC.

1. Organization tax: The fees are small; \$25,000 or less capital stock, \$10; \$25,000 to \$100,000, \$25; tax up to \$500,000, \$20; tax up to \$1,000,000, \$25; tax on \$1,000,000 or more, \$40.

There is no annual franchise tax to the State, but the law provides for the publication of the annual report, which would cost possibly \$25 to \$50 per annum, which not only gives publicity to the corporate business of the company, but puts an arbitrary newspaper tax upon it as well.

A million-dollar corporation would cost \$25, and \$1.00 for certified copy, with ten cents per folio for the articles are charged over 1,000 words, making a total of about \$27.

In considering this fee, a solicitor's fee must be reckoned, cost of probably \$25, or a total cost of about \$40 or \$50, possibly less.

The laws of South Dakota should be remodeled by a commission of attorneys.

There are so many unsettled and objectionable features of the law that, notwithstanding the very low charges, South Dakota must be eliminated from the consideration of an incorporating State.

§ 90. Best Place to Incorporate.

The classification reached from the foregoing analysis of the objections and fees of the various States considered here, and we believe it to be a correct analysis from the statutes cited, we do not hesitate to put each State where we think it ranks as an incorporating State, as follows; to wit:—

First: Arizona Territory.

Second: West Virginia and Connecticut.

Third: New Jersey.

Fourth: New York.

We disclaim any purpose of discrimination in favor of one State against another, and set forth the facts and the law, so that those who examine them may reach their own conclusion, if the conclusion reached by us is unsatisfactory.

Twelfth minute: It was decided to incorporate in (here insert the name of State decided upon).

§ 91. Business of Incorporation Talked Over; Adjournment.

All this may legally be done, and unless a record is de-

sired, usually is performed by simply talking it over among the incorporators, and thus dispose of it.

The above suggestions as to the order of business may be discussed at the formation or initial meeting, and possibly presents more than they would desire to discuss, or, it may be, far less. The meeting can, and usually do, discuss and settle upon just what they are going to do and how they are going to do it, whether it be little or much, and if, for any reason the questions coming before the meeting are such that it would require more time to consider, the meeting can adjourn to a time and place then fixed, or they can adjourn to meet at the call of the chairman pro tem.

In any and in all cases the secretary will preserve his minutes and present them to the next regular meeting for adoption or rejection.

The last matter that will come before such an assembly is the motion to adjourn. The motion to adjourn takes precedent over any other motion except the motion to fix the time and place of an adjournment. The motion to adjourn is not debatable, can not be amended, or have any other subsidiary motion applied to it, nor is it subject to a vote to reconsider. If the motion to adjourn is lost, there must then be some business transacted before it will be in order for another motion to adjourn.

Robert's "Rules of Order," pp. 37-191.

Form of the motion is: Usually some member will arise and say, "I move to adjourn," to meet at such a time as he may specify and at such a place as he may suggest; or the motion may be in the following form, that "when we adjourn, we adjourn to meet at the call of the chair." If the motion is in the last-named form, it will be necessary for the chairman to give notice to the members of the time and place and purpose of such meeting. These proceedings will close the initial or formation meeting of the incorporators.

CHAPTER VI.

DRAFTING THE CHARTER OR ARTICLES OF INCORPORATION.

§ 92. Conditions Precedent and Subsequent.

After the place of incorporation has been decided, the next step is to prepare the charter or Articles of Incorporation. This is an important piece of work.

Where the laws of the State are general and the "conditions precedent and subsequent" numerous, the drafting of the Articles of Incorporation is one of the most difficult, as well as the most profound, instruments known to the law. That it must comply with the "conditions precedent and subsequent" and secure the scope and power of business required by incorporators is the result desired.

§ 93. Matter Eliminated.

Care should be taken that the Articles of Incorporation is not filled with any of the following; to wit:—

1. Matter of law: This is matter already granted by the law, either express or implied, as the law is as much a part of the articles as if it was written into the articles themselves; it is the controlling feature of the articles.

2. Matter of by-law: This is matter pertaining solely to the working rules of the corporation under the law and the Articles of Incorporation.

3. Matter of contract: This is matter relating to the right to make contracts, which is an inalienable right of every individual in the corporation as well as the corporation itself, that the Legislature can neither abbreviate, abridge, nor deny. The right to contract could not possibly be made stronger if it were expressed a thousand times in the Articles of Incorporation.

These are general suggestions, without descending to the particulars of any particular charter or Articles of Incorporation.

We can not insist too strongly on the drafting of the Articles of Incorporation. The charter or articles are property, valuable property; the franchise secured rests in the powers enumerated in the articles.

If the powers are small, the value of the corporate franchise is correspondingly small, the scope is limited, its breadth is narrow; hence the articles should be prepared by a lawyer who understands how to secure the greatest powers in the first instance. That the powers secured depend upon the skill of the attorney who prepares it can not be doubted

§ 93a. Corporate Franchise Is Property.

Said the Supreme Court of the United States in *Horn Silver Mining Co. vs State of New York*, 143 U. S. 305:—

“The right and privilege or franchise, as it may be termed, of being a corporation is of great value to its members, and is considered as property, separate and distinct from the property which the corporation itself may acquire.”

§ 93b. Particulars of the Articles of Incorporation.

Having eliminated generally from consideration the matters not to be put into the Articles of Incorporation, it is important to descend to the particular matter to be eliminated, and point out what is to be put into the Articles of Incorporation from an analysis of the particular statutes.

This consideration will, if followed to its result, involve an analysis of all the statutory enactments of the various States upon the law of corporations, which we must decline to do in this work, as it could serve no more useful purpose than an analysis of one of the statutes of the leading States, inasmuch as the same reasoning and law that applies to one statute will apply with like force to all statutes on the same state of facts or requirements of law, as well as furnish a precedent for the analysis of any statute.

§ 94. Powers Eliminated from Charter.

In Sharswood Blackstone "Commentaries," Vol. 1, p. 475, we find the following language respecting the powers of a corporation at common law; to wit:—

"After a corporation is so formed and named, it acquires many powers, rights, capacities, and incapacities, which we are next to consider. Some of these are necessarily and inseparably incident to every corporation; which incidents, as soon as a corporation is duly erected, are tacitly annexed, of course, as (1) to have perpetual succession. This is the very end of its incorporation; for there can not be a succession forever without an incorporation; and, therefore, all aggregate corporations have a power necessarily implied of electing members in the room of such as go off. 2. To sue or be sued, implead or be impleaded, grant or receive, by its corporate name, and do all other acts as a natural person may. 3. To purchase lands, and hold them for the benefits of themselves and their successors, which two are consequential to the former. 4. To have a common seal; for a corporation, being an invisible body, can not manifest in its intentions by any personal act or oral discourse; it, therefore, acts and speaks only by its common seal. For, though the particular members may express their private consent to any acts, by words or signing their names, yet this does not bind the corporation; it is the affixing of the seal, and that only, which unites the several assets of the individuals who compose the community, and makes one joint assent of the whole. 5. To make by-laws or private statutes for the better government of the corporation, which are binding upon themselves, unless contrary to the laws of the land, and then they are void. This is also included by law in the very act of incorporation; for, as natural reason is given to the natural body for the governing it, so by-laws or statutes are a sort of political reason to govern the body politic. And this right of making by-laws for their own government, not contrary to the laws of the land, was allowed by the law of the twelve tables at Rome. But no trading company is with us allowed to make by-laws which may affect the king's prerogative or the common profit of the people, under penalty of £40, unless they be approved by the chancellor, treasurer, and chief justices, or the judges of assize in their circuits; and, even though they be so approved, still, if contrary to the law, they are void.

These five powers are inseparably incident to every corporation, at least to every corporation aggregate."

§ 95. Doctrine Not Contract Without Seal Exploded.

The doctrine laid down in the text is now repudiated everywhere in the United States, if not in England. Corporations, through their officers and agents, may do valid acts and make valid contracts within the scope of the corporate power, either oral or in writing, without seal; and, indeed, contracts may be implied as against corporations just as they may be against individuals. Says Judge Story:—

"The technical doctrine that a corporation could not contract except under its seal, or, in other words, could not make a promise, if it ever had been fully settled, must have been productive of great mischiefs.

"Indeed, as soon as the doctrine was established that its regular appointed agent could contract in its name, without seal, it was impossible to support it; for otherwise the party who trusted such contract would be without remedy against the corporation. Accordingly, it would seem to be a sound rule of law that wherever a corporation is acting within the scope of the legitimate purposes of its institution, all parol contracts made by its authorized agent are express promises of the corporation, and all benefits conferred at their request raise implied promises, for the enforcement of which an action may well lie. See *Bank of Columbia vs. Patterson's Administrators*, 7 Cranch 306. The reason assigned for the old notion was that a corporation being incorporeal, and consequently incapable of speaking, it was impossible that it should enter into a parol contract. But, upon reflection, this reason has been thought insufficient; for, if pursued to its full extent, it would prove that a corporation could not act at all. It has no hand to affix a seal, and must therefore employ an agent for the purpose. But this agent must receive his authority previous to his affixing the seal.

"It is necessary, therefore, that the corporation should have the power to act without seal, so far as respects the appointment of a person to affix the seal. Now, if it can appoint an agent without seal for one purpose, there is no reason why it may not for another."

Turnpike Co. vs. Rutter, 4 S. & R. 16; *Hamilton vs. Lycoming Ins. Co.*, 5 Barr 339.

"It is true that a corporation, being an *ens legis*, has no inherent power to act, or, indeed, any power at all beyond what is necessary to accomplish the end of its being; but it is also true that within the scope of its legitimate functions it may act as a natural person might. In defining its power, it would be impracticable to enumerate them specifically or to do more than circumscribe the field of its action, leaving it to exercise all those that are incidental and necessary to the purposes of its creation."

Cumberland Valley R. R. Co. vs. Baab, 9 Watts 460.

The reason above stated at common law, why a corporation could not contract without a seal, because of its having no voice, withering under the power of the great Judge Story, illustrates more forcibly the fallibility of some of the old notions of the law when it encounters the business and progressive ability of this age than possibly could any other fact.

It also shows that the only meets and bounds that limit the action of our courts is, Is it right?

Right is the foundation stone upon which all things must rest, to which all business must bow and law yield. What right is, is difficult to know, as it must come from the reason of the mind, after it has brought to its aid the business customs of the country as practiced by the people, together with the soundest legal philosophy as laid down by the great minds of the earth.

§ 96. Combination Idea.

One of the original notions of a corporation was combination as under the Roman law from whence it sprang. "Three form a corporation," no less, yet while this was true in its formation, still afterward, if it was reduced to one, the corporation still existed.

Sharswood Blackstone, Vol. 1, p. 468.

The requirements of the English lawyer produced the sole corporation. The king was a sole corporation. This fiction grew, no doubt, out of the desire to perpetuate the system of control of government and of things best suited to those then in control of the government, and to, at the same time,

prepare a system that would be law when called in question, and there would be no means of removing the law except to remove the law-giving source.

Whether any system of combination is right is quite another question. Government itself is combination. If it is right for the mass of the people or any definite part of the people of the earth to combine, why is it not for the same reason right for any number of persons or one person to follow the same system?

The common law defined the powers of a corporation, and circumscribed the limit of those powers in the second enumeration of powers as that of a natural person.

Whatever the scope of a natural person at that time undoubtedly was the only limit placed on the acts or things that a corporation could do in the business or matter designated in the charter.

§ 97. Two Ends Reached by Incorporation.

It will be noted by an examination of the effort of the Roman and English lawyers in the erection of the corporation that they sought to reach two ends:—

1. To clothe corporations with the same legal scope as a natural person.

2. To crown this corporate fiction with a legal immortality.

Speaking of the result desired by the creation of the corporate fiction, Judge Sharswood said:—

“In order to preserve entire and forever those rights and immunities which, if they were granted only to individuals of which the body corporate is composed, would upon their death be utterly lost and extinct. . . . But when they are consolidated and united into a corporation, they and their successors are then considered as one person in law. As one person, they have one will, which is collected from the sense of the majority of the individuals. This one will may establish rules and orders for the regulation of the whole, which are a sort of municipal laws of this little republic; or rules and statutes may be prescribed to it at its creation, which are then in the place of the natural laws. The privileges and immunities, the estates and possessions, of the cor-

poration, when once vested in them, will be forever vested, without any new conveyance to new successions; for all the individual members that have existed from the foundation to the present time, or that shall ever hereafter exist, are but one person in law, a person that never dies, in like manner as the River Thames is still the same river, though the parts which compose it are changing every instant."

Sharswood Blackstone "Commentaries," Vol. 1, pp. 467-478.

"The honor of originally inventing these political Constitutions entirely belongs to the Romans."

Sharswood Blackstone, Vol. 1, p. 468.

It would therefore appear to be a necessity to the perpetuity of the identity of the State as well as the private interests of those who compose it.

The difficulty has not been in the application of the principles of corporate authority to the public functions as it has to apply the corporate principles to the industrial institutions of private individuals.

The idea that all authority must emanate from the State by an act of the Legislature in granting its charter founded the impression that the corporation had some sort of sovereignty and had no power except such as was specifically designated by the act creating it and its charter.

However, since the Legislatures have generally (except in seven States) superseded the legislative sanction directly with general legislative enactments enumerating and granting generally certain powers together with certain "conditions precedent" to be complied with in order to erect the corporate fiction, it has in a certain sense reversed the limitation on corporate powers and returned to the original idea, that a corporation has all the rights in business that a natural person has, and it has no sovereign authority whatever.

The powers originated and applied by the Romans to corporations aggregate, and in turn adopted and applied by the English lawyers to corporation aggregate and sole, are as broad in their scope as can be made because their scope

is as broad as the horizon of an individual, which is without limit except where it infringes on the just rights of others.

It follows, therefore, that the limitations on the power of a private individual to do business are such as are within the Constitutions and the laws of the land, together with such inalienable rights as belong to his natural existence, and that the rights of a corporation, the artificial being, in business are the same unless restricted by the powers enumerated in the statutes under which the corporation is created.

§ 97b. Powers Unnecessary in Articles Are Eliminated.

Coming now to an understanding of the powers of a corporation at common law as an "incident," "tacitly annexed of course," upon its erection, prepares us to understand that the corporate existence is one thing and the powers incident thereto are quite another, and that at common law the enumeration of the powers were unnecessary to be put in the corporate charter because they are tacitly annexed *ipso facto* upon its formation of course.

Such powers or rights attached at once upon the coming into existence of the artificial person like the inalienable rights of a natural person upon their coming into existence. And, therefore, no reason exists why they should be enumerated in the Articles of Incorporation, as such enumeration would only encumber the articles.

§ 97c. Inalienable Rights of Corporation.

We shall therefore call such powers or rights as "are necessarily and inseparably incident to every corporation (Sharswood *supra*)" the inalienable rights of a corporation.

The inalienable rights of a corporation are analogous to the inalienable rights of every natural person; this must be understood to be within the business in which the corporation is to engage, as the industrial or private corporation is that to which reference is had.

The right of contract is an inalienable right inseparable from the right of property under the scheme of private ownership of property.

Almost every human action concerning property is a contract, either express or implied, written or verbal.

The Constitution of the United States provides that "no State shall . . . pass any . . . law impairing the obligation of contracts."

Constitution U. S., Sec. 10.

This constitutional inhibition, by the sovereign powers of the United States, against the invasion of the right of contract by the several States, adds nothing to the inalienable right of contract inherent in every person for that it is an inalienable right "necessarily and inseparably incident" to his very existence "tacitly annexed of course."

The Constitution in no respect infringes the right of contract, but leaves that power where it rightfully belongs respectively with the people.

Amendment to Constitution, Art. X.

In the light of these suggestions and conclusions, we are prepared to understand the language of Blackburn J. in *Ashbury Ry. Carriage & Iron Co. vs. Riche L. R.* 9 Exch. 224; to wit:—

"I take it that the true rule of law is that a corporation at common law has, as an incident given by law, the same power to contract, and subject to the same restrictions, as a natural person has. And this is important when we come to construe the statutes creating a corporation; for if it were true that a corporation at common law has a capacity to contract to the extent given it by the instrument creating it, and no further, the question would be, Does the statute creating the corporation by express provision or necessary implication show an intention in the Legislature to confer upon this corporation capacity to make the contracts? But if a body corporate has, as incident to it, a general capacity to contract, the question is, Does the statute creating the corporation by express provision or necessary implication show an intention in the Legislature to prohibit, and so avoid the making of a contract of this particular kind?"

In *Thomas against West Jersey R. Co.*, 101 U. S. 71, the Supreme Court of the United States said:—

"We take the general doctrine to be in this country, though there may be exceptional cases and some authorities to the contrary, that the powers of the corporations organized under legislative statutes are such, and such only, as those statutes confer. Conceding the rule applicable to all statutes, that what is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others."

Powers of corporations are as broad as those of individuals, unless restricted by statutes.

Thompson vs. Lambart, 44 Ia. 239.

Same power as to making contracts as an individual.

Warfield vs. Marshall County Counery Co., 72 Ia. 666.

A corporation can do any act not specially inhibited by legislative enactment.

Handley vs. Stulz, 139 U. S. 417.

The pivotal point to be considered, then, in considering the statute, is to see and understand whether the statute restricts the common law powers of a corporation or lays any embargo on the corporation to lessen its rights and to bring it far within the scope of a natural person, for the rule is that which is not specially inhibited by statute is as much granted as if it was expressly given, because every inalienable right of a corporation belongs to it as the gist of its very existence, necessarily and inseparably incident to its being as an institution of the common law.

Hence a statute that has the least restrictions will have the widest scope, and the greater restrictions the narrower scope for the corporation, and the powers or inalienable rights of a corporation must not be put into the Articles of Incorporation.

§ 98. Arizona Corporate Power.

Among the powers of such bodies corporate shall be the following:—

1. To have perpetual succession.

2. To sue and be sued by the corporate name.
3. To have a common seal and alter the same at pleasure.
4. To render the shares or interest of stockholders transferable, and prescribe the mode of making such transfers.
5. To exempt the private property of members from liability for corporate debts.
6. To make contracts, acquire and transfer property, possessing the same power in such respects as private individuals now enjoy.
7. To establish by-laws and make all rules and regulations deemed expedient for the management of their affairs not inconsistent with the Constitution and the laws of the United States and the laws of this Territory.

Ariz. Rev. Stat., par. 765, sec. 5.

§ 98a. Powers at Common Law Analyzed and Compared with Arizona.

An analysis of these statutory powers and a comparison thereof with the incident corporate powers at common law, we find:—

1. That “to have perpetual succession” was the first enumeration of the powers at common law. This means that the corporation will go on regardless of who owns its stock, or whether they may or may not sell, assign, or die, and the stock descend to their heirs, and that in no case is the corporation affected.

2. To sue and be sued by its corporate name is also one of the incident corporate rights at common law.

3. To have a common seal and alter the same at pleasure is a deviation from the corporate notion at common law, as has been heretofore shown. A seal is not of very grave importance, as has been shown, because the doctrine that a corporation could not act except under seal has all been exploded, a seal being no longer necessary unless an individual would have to use a seal, and in such case any scrawl will do, if that is the seal of the company.

4. This enumeration is a power not found specifically enumerated in the common law powers, but the powers enumerated at common law were general, and cover this feature, as the issue of stock by corporations were not then regulated by law, as it was a mere matter of business of the incorporators among themselves.

Lay or business corporations at common law were subject to no particular statutes. Their powers were powers incident to their creation, and rested in the custom of long usage for authority.

Sharswood Blackstone "Commentaries," vol. 1, p. 475.

"Their charters or immemorial usages, which are equivalent to the express provisions of charter, are, in fact their statutes."

Chitty; Sharswood *supra*.

As the issuing of stock is only one of the things done by corporations, necessarily a corporation had the power to issue stock according to the customs and usages of corporations at common law.

At the common law, the length, breadth, and depth of the corporation was the horizon of the rights of natural persons; they looked to no law for their powers but their own immemorial usages and customs.

5. Is not an enumeration of powers specifically found at common law and possibly no such right existed. It is a very beneficial power of the stockholder, because it enables him to limit his liability to the amount he puts into his corporate venture. He can lose no more than he risks, and those who deal with the corporation have notice that they must look to the corporate assets for their security, and to no other source.

6. All the elements of this power are found in the various enumerated powers of the common law.

"To make contracts" is a power which it is difficult to see how an industrial corporation could exist without. It covers every conceivable contract which a corporation nec-

essarily would have to make; and should any question arise regarding whether a corporation would have the right to do or perform a given transaction, it would only be necessary to determine whether it required a contract or not.

"Acquire and transfer property" in power *supra* scarcely enlarges upon the power to make contracts, as to "acquire and transfer property" covers all classes of property real, personal, and mixed, besides, it is scarcely conceivable how property could be acquired or transferred in a business way except by contract, either express or implied.

"Possessing the same powers in such respects as private individuals now enjoy,"—this language serves to instruct concerning the limitation of corporate right of contract and property, beyond which no human power can go. The power of a corporation is encompassed within no narrower limits than a natural person in regard to contracts and property. Its right therein is as strong as a natural person and as much stronger as the law gives. It is as weak as a natural person and no weaker; there is no contract it can not make; there is no property it can not own. For that natural persons are the authors of contract and the inventors of the scheme of private property, although broad and unlimited in its scope, this power adds nothing to the corporate rights already enjoyed at common law.

7. The power to make by-laws is the same as at common law. This was a power delegated to corporations found in the twelve tables at Rome.

Sharswood Blackstone "Commentaries," vol. 1, p. 475.

The right to make by-laws for this artificial person as they conceived it was necessary to its welfare and analogous to reason possessed by natural persons.

Sharswood *supra*.

Corporate powers seen, understood, and eliminated from the articles prepare us to understand what the law requires to be put into the Articles of Incorporation.

§ 99. Analysis of the Corporate Law of Arizona.

Descending now to the statutory enactments required to be met in the Articles of Incorporation as found in the laws of Arizona, which will serve as an illustration of the requirements of any general incorporating law of any State.

Every State and Territory of the Union, but seven, has general incorporation acts which contain requisites to be performed and complied with before incorporation can be had, completed, or reached. Articles of Incorporation that do not show a compliance with such statutory requisites or, in legal phraseology, "conditions precedent," are, as every lawyer knows, without force, or legal effect, and are only so much waste paper, and void.

These conditions precedent, however useless, arbitrary, or unreasonable they may seem, must be complied with to the letter. These conditions precedent are the terms of the contract offered by the State, and unless they are complied with by the individuals who form the corporation, they fail to comply with the terms of the contract, and for that reason no contract ever comes into existence, or can ever exist. Hence the importance of compliance with each and every one to a letter.

§ 100. "Conditions Precedent."

The same will that can grant corporate rights or powers can pronounce the terms and conditions of the grant, without a compliance with which the corporate franchise can not exist. Conditions precedent are mandatory provisions of the law or necessary steps in the process of incorporation. A material omission of any one of them will be fatal to the existence of the corporation.

Martin vs. Deets, 102 Cal. 55.

In the case of Mokelumne Hill Canal Min. Co. vs. Woodbury, 14 Cal. 424, it is said:—

"There is a broad and obvious distinction between such acts and are declared to be necessary steps in the process of

incorporation, and such steps as are required of the individuals seeking to become incorporated but are not made prerequisites to the assumption of corporate powers. In respect to the former, any material omission will be fatal to the existence of the corporation, and may be taken advantage of collaterally, in any form in which the fact of incorporation can properly be called in question."

Wall vs. Mine, 130 Cal. 27; Martin vs. Deets, 102 Cal. 55; Hyde vs. Doe, 4 Sawy. 133; Fed. Cas. No. 6969; Atty. Gen. vs. Houchett, 42 Mich. 436; 4 N. W. 182; Montgomery vs. Forbes, 148 Mass. 249; 19 N. E. 342, and 1 Cumming, Cas. priv. Corp. 69; State vs. Critchett, 37 Minn. 13; 32 N. W. 787; Broderi vs. Salmon, 2 Ch. 323; Utley vs. Tool Co., 11 Gray (Mass.) 139; Unity Ins. Co. vs. Cram, 43 N. H. 636; Corey vs. Morrell, 61 Vt. 598, 17 Atl. 840; Reed vs. Railway Co., 50 Ind. 342; Busenback vs. Road Co., 42 Ind. 265; Miller vs. Road Co., 52 Ind. 51; State vs. Central Ohio Mut. Relief Ass'n, 29 Ohio st. 399; Harris vs. McGregor, 29 Cal. 124; Montgomery vs. Forbes, 149 Mass. 249; 19 N. E. 342; 1 Cummings, Cas. Priv. Corp. 69; Clegwood vs. Grange Co., 41 2a 122; Wesy vs. Ditching Co., 32 Ind. 138; O'Reiley vs. Draining Co., id. 169; Atty. Gen. vs. Lorman, 59 Mich. 157; 26 N. W. 311; In Re Crown Bank, 44 Ch. Div. 634; People vs. Selfridge, 52 Cal. 331; Kaiser vs. Bank, 56 Iowa 104; 8 N. W. 772; State vs. Beck, 81 Ind. 500.

To illustrate the nicety of distinction to which our courts are compelled to descend in order to protect the rights of the State on the one hand and safeguard the right of individuals on the other under the law, we quote from the Supreme Court of Texas, as it expounds the statutory "conditions precedent" requiring the "purpose" of the corporation to be stated in the Articles of Incorporation:—

"A charter must set forth the purpose for which it is formed. This for the reason that if it had been intended that a corporation might be created for two or more of the purposes specified in the statute, it would have been proper to have stated "purpose or purposes for which it was formed." The use of the word "purpose" in the singular number tends to show that it was the intention of the Legislature to authorize

the creation of a corporation for only one purpose. It may be true that the use of the singular number may not be the conclusion of the question, and that if there were other purposes in the act which either by express declaration or clear implication indicate that it was intended to authorize incorporation for two or more of the designated purposes, whether in the same subdivision or not, we should so hold."

Ramsey vs. Tod, 95 Texas 614; 69 S. W. 133.

It will be noted from the array of authorities here cited that no difference of opinion is entertained by the great jurists of our country upon the compliance with the necessary steps of the law or "condition precedent" before a *de jure* incorporation can be had.

It then becomes vital to know in every instance, under whatever law incorporation is sought, what is necessary and what is not, what to do and how to do it, who can perform these acts, and who can not.

It may now be said that Articles of Incorporation is one of the most profound documents or legal accomplishments known to the law, requires not only the intelligence of a lawyer to prepare, but a lawyer of skill and ability as well. It is not a school-boy's essay, nor a rambling harangue of a political sachem, nor is it a paper within the scope of the every-day business man, much less within the range of generals fresh from the red bush. Thrice more authorities could be cited showing instances throughout the States of the Union where corporations have been stripped of their franchises and authority by the courts of the land, and their charters left barren, useless, and more than worthless, but it would encumber rather than tend more clearly and forcibly to illustrate the absolute necessity of compliance with every condition precedent found in the law.

§ 100a. Analysis of Conditions Precedent of Laws of Arizona.

It will be profitable to segregate and separate the "conditions precedent" found in the statute of Arizona, and each one analyzed, and its ingredients or requisites clearly pointed out and set forth.

Beginning with par. 766, sec. 6. Rev. Stat. Ariz. Ter., as amended by the acts of 1903, page 140 reads:—

“Before commencing any business except that of their own organization, they must adopt Articles of Incorporation, which shall be signed and acknowledged by them as deeds are required to be acknowledged and recorded in a book for that purpose, in the office of the county recorder, where the principal place of business is to be.”

First, Articles of Incorporation must show adoption on their face.

In *Smith vs. Silver Val. Min. Co. (Md.)*, 20 Atlantic 1032, Justice Miller said:—

“The mere grant of a charter, where it does not appear upon the face of the incorporating act, or otherwise, that the named corporators applied for it, does not create the corporate body. Something must be done. There must be at least an acceptance of the grant by a majority of the corporators before corporate life and existence can be begun.”

Adoption in the articles shows the “acceptance of the grant” by all the incorporators.

The word “adopt” is exclusive in the statute. It has no counterpart. It has no synonym in the English language.

Webster’s Dictionary, Unabridged.

“Adopt” omitted from the “articles” leaves out the first condition precedent required by the statute of Arizona.

Second, “Articles” must be “signed” by two persons at least.

R. S. *Supra*; R. S. 764, sec. 4.

Signing the Articles of Incorporation need not be within the State where they are to be procured.

Humphrey vs. Mooney, 5 Colo. 282.

“Dummies” will not suffice.

R. S. 766, sec. 6; *Broderick vs. Salmon L. R.*, 2 chap. 323; *Kaiser vs. Bank*, 56 Iowa 104.

Initials of surname sufficient.

State vs. Beck, 81 Ind. 500.

Signing by mark is sufficient.

Trustee vs. Campbell, 46 La. Ann. 1543; 21 So. 184.

Third, "Articles" must be acknowledged as "deeds."

R. S. 766, sec. 6; Doyle vs. Wisner, 42 Mich. 332;
3 N. W. 968; Kaiser vs. Bank, 56 Ia. 104; 8 N. W. 772.

Five required by law to sign and acknowledge, but only four acknowledged held insufficient.

People vs. Company, 97 Cal. 276; 32 Pac. rep. 236.

No less than the least number required by statute to form a corporation can sign and acknowledge. No less than two in Arizona.

R. S. 764, sec. 4; Doyle vs. Mezner, 42 Mich. 332;
State vs. Cutchet, 37 Minn. 13; 32 N. W. 787; Kaiser
vs. Bank, 56 Ia. 104; Hughs vs. Company, 34 Md. 316.

Need not be acknowledged within the State of the incorporation.

Humphrys vs. Mooney, 5 Colo. 282.

Fourth, "Articles" must be recorded "in the county recorder's office" where the principal place of business is to be, in Arizona Territory. This serves two purposes—gives notice as other instruments and satisfies the condition precedent of the statutes.

Hunt vs. Salisbury, 55 Mo. 310; Bergeon vs. Hobbs, 96 Wis. 641; In Re Shokoppe Mfg. Co. V., 37 Minn. 91;
G. M. & S. Co. vs. Richards, 95 Mo. 106; R. S. 766, sec. 6; Abbott vs. Smelting Co., 4 Neb. 416; Kaiser vs. Bank *supra*.

The domicile of a corporation is the State in which it was formed.

American E. Co. vs. Johnston, 60 Fed. 503; Chaffer vs. Bank, 71 Me. 514.

The "principal place of business" or residence is where the principal office is located in the county in the State of its domicile.

McSherry vs. Co., 97 Cal. 637; 32 Pac. 711; State vs. Railway Co., 45 Wis. 580.

The Articles of Incorporation may be forfeited for failure to maintain a domiciliary office or place of business in the State or Territory of its erection.

State vs. Company, 24 Tex. 80; N. S. R. Co. vs. People, 147 Ill. 234; 35 N. E. 608; State vs. Company, 58 Minn. 330; 59 N. W. 1048; State vs. Summons Company, 45 Wis. 579; Summons vs. Company, (N. C.) 18 S. E. 117; State vs. Company, 59 Kan. 151 x; 52 Pac. 422.

It is all important to have a domiciliary office in the State of its formation, as was said by Justice McAdams in *Kruse vs. Dusenbury*, 19 Wk. Di. (N. Y.) 201:—

“If the corporation has no place of business in the State where it was incorporated, it does not affect the charter, but it can not have branch offices elsewhere.”

Fifth, “Articles” must contain “the name of the corporators, the name of the corporation, and its principal place of transacting business.”

R. S. 766, sec. 6, sub. 1.

(a) “The name of the corporators” this language presumes that those who form the corporation, as the owners in fact, shall appear in the articles and not a set of dummies, nor even those who sign merely for convenience, nor those who sign to hide the identity of the real owners or corporators, as that would be a circumvention rather than compliance with the true spirit of the requirement.

(b) Nameless corporation is not a corporation in Arizona.

“The name is an indispensable part of the constitution of every corporation, the knot of its combination, as it has been called, without which it can not perform its corporate functions.”

Fort Assn. vs. Model-Assn., 159 Pa. St. 308.

Sixth, “Articles” must contain “its principal place of transacting business,” indicating clearly that the principal place of transacting business is a distinct locality from its “principal place of business.”

R. S. 766, sec. 6, Sub. 1.

A corporation must have a place of business in the State of its domicile in order to have a place for transacting business elsewhere in another State.

Kruse vs. Dusenbury, 19 Wk. Di. (N. Y.) 201.

Having a place of business in the State of its domicile, it is proper for the incorporators to contract for a place of "transacting" business in another State. The Supreme Court of the United States said on this point, to wit:—

"As, then, a corporation can have no legal existence outside of the State in which it is incorporated, the contract of the stockholders with one another, by which the corporation is created is presumed to have been made with reference to the laws of that State, nothing being said in the charter to the contrary. But as comity permits a corporation to enter another State and do business therein, it is competent for the stockholders in making their charter to contract with reference to the laws of a State in which they propose to do business."

Pinney Et Al vs. Nelson, 22 Supreme Court Reporter 52, Reading page 55.

The "principal place of business" or office and the principal place of "transacting" business are not one and the same place. It may have a principal office, or place of business in one place and transact the major part of its business in another, in the same or in an adjoining State. Or it may keep a domiciliary office in one State and "transact" all of its business in another.

McSherry vs. Company, 97 Cal. 637; 32 Pac. 711; Kenet vs. Company, 68 N. H. 432; 39 atl. 585; Meridith vs. Company, 59 N. J. Eq. 257; 44 atl. 55; Harris vs. McGregor, 29 Cal. 128 & 129; Clegnor vs. Grange Co., 41 Ia. 122.

Another purpose of stating the place of "transacting" business is for service of process. Arizona statute uses word "transacting," leaving no room for doubt. It must be in there. Articles of Incorporation are defective and insufficient without.

Seventh, "Articles" must contain "the general nature of the business proposed to be transacted."

R. S. 766, sec. 6, sub. 2.

This requirement, upon its face innocent and unpretentious, is yet the most difficult and profound.

The definite article "the" points out and particularizes the particular business spoken of or meant, the "general nature" of which is required to be stated.

Black's Law Dictionary 1168; 2 Binn 568; 25 Am. and Eng. Law 1019.

We, therefore, have the general nature of a particular business that is going to be transacted, that is required to be stated.

It is at once seen that we can not descend and state the particular nature of that business, because the law requires "the general nature" to be stated.

We can not descend to the particular transactions, that we expect to have while transacting this particular business, as that would be referring to the working or carrying on the particular business, the "general nature" of which is required to be stated.

We can not descend to the mentioning of the various products to be handled by the corporation, as that would be stating the name of the materials to be handled in the particular business, the general nature of which is required to be stated.

We must not state two or three or a multiplicity of businesses in the singular form, as it would not be understood what the general business is. It might be either or neither, and compliance with the statute would not be made out, but avoided. It would require oral evidence to show what business was meant. Conditions precedent can not be supplied by oral proof afterward.

If it is desired to cover a multiplicity of business, the businesses must not be designated particularly but generally in the general form, so that the various particular lines of

businesses may be transacted under one general head or be covered by a statement of the "general nature" of the one business.

1. Thus "mining in all its branches," and any subsidiary business essential thereto, will cover mining for the metals of any character,—coal, oil, or any kind or class of mining whatsoever,—and it also covers carrying out the business of mining. It would matter not what kind of particular business it might be necessary to do, the corporation would have the right to do it if such business was necessary to carry out the general enterprise engaged in of mining.

2. Again, the general nature of the business to be transacted or engaged in is agriculture in all its branches, would cover whatever particular form of agriculture that exists or all combined.

3. Again, the general nature of the business in which the company shall engage is horticulture, and doing all things necessary to promote the horticultural business.

4. Again, the general nature of the business in which the company shall engage is common carrier of persons, agricultural and mineral products, and all articles of commerce, by land or sea, would cover a wide scope.

5. Again, the general nature of the business in which the corporation shall engage is manufacturing in all of its branches, of all kinds and character of substances.

This statement would cover the manufacture and sale of anything manufacturable out of any known substance.

To further illustrate, it may be said that the general nature of the business proposed to be transacted is brokerage general and special in all of its branches.

This statement covers the following kind and character of brokers: Exchange, insurance, merchandise, note, pawn, real estate, ship, stock, and all other kinds or character of brokers.

Again, suppose you should say, The general nature of the business proposed to be transacted is that of an exchange

broker. It is apparent that you would be limited in your powers in the Articles of Incorporation to the business of an exchange broker only, and should you transact business as any other kind of a broker, your acts would be *ultra vires*.

Hence to secure the proper powers requires the statement made by a lawyer who understands the legal force and effect of the language used in legal contemplation, in the Articles of Incorporation.

The powers may be limited, if that is desired, as to say: The general nature of the business in which this company shall engage is the manufacture and sale of "edged tools" or farm implements, or boots and shoes, or wines and spirituous or malt liquors, or wizard oil, or salt, or sugar, or whatever particular line of business is desired.

6. If a more extended power of business is desired, it may be said: The general nature of the business to be transacted, or in which the company shall engage, is mining, agriculture, horticulture, transportation, manufacturing, brocage, factor, banking, etc., etc., stating generally the general nature of the businesses in which the company has or takes the right or power to engage, as the option is with the company what scope it shall cover, and thus the powers of the business in which the company shall engage are secured, in contradistinction to the powers given by the law, such as the right to contract, own property, etc.; in other words, if a corporation secured a franchise to manufacture "edged tools," it could not mine for the precious metals and be within the powers of its charter. Its every act in mining would be *ultra vires*.

Hence it is of the utmost importance to draft the Articles of Incorporation so that the greatest power is secured in the first instance for the transaction of the corporate business desired.

As was said by the Supreme Court of the United States:—

"The charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others."

Thomas vs. West Jersey R. Co., 101 U. S. 71.

The powers of the charter are the measure of its value; the greater the powers, the greater its value; the smaller the powers, the less its value. However, it must not be understood that should more than was necessary, or particular, matter be stated, that it would invalidate the articles; the court would treat it as surplus if the court could discover powers secured in the articles sufficient to hold the charter good. There, however, is the rub. To see the necessary statement and put it in the articles is where the skill of the lawyer surpasses that of all his laity brethren; the proper statement must be made before a legal entity can be created. The general nature of the business must be stated, not the particular nature.

The powers granted by the law and the powers or rights enumerated in the articles are not one and the same, and must not be confused.

The one is its inalienable rights and the other is the rights it secures by their enumeration in the Articles of Incorporation.

Hence, in complying with the feature of the laws of any State, care must be taken to secure the proper powers for the corporation under its law. The right to use the powers secured by the articles is called the corporate franchise; that is what the State grants, the right to transact the business, the general nature of which is stated in the Articles of Incorporation.

The naming of contracts, even multiple, the repetition of the names of materials, however extended, the multiplication of transactions in property of whatever character, no matter how numerous repeated, are all only an enumeration of the powers already given by the statute, and heretofore pointed out as matter that must be left out of the articles, or are inalienable rights and should be avoided as they encumber the articles, entail expense, and secure nothing. Articles of Incorporation with nothing but such last-named matter in it as a statement, states the general nature of no busi-

ness, and obtains no powers, to transact any business whatever.

8. "Articles" must contain, "The amount of capital stock authorized, and the time when, and the conditions upon which it is to be paid in."

R. S. 766; sec. 6, sub. 3.

"Capital stock" is distinguished from "capital."

The former is amount secured or paid in, and always remains the same; the latter is broader term, and includes former with all profits.

Clark on Corporations, 256.

9. "Articles" must state when capital stock is paid in as based on some happening certain as near as can be, as when stock is issued.

R. S. 766, sec. 6, sub. 3 supra.

10. "Articles" must state conditions of payment of capital stock.

R. S. 766, sec. 6, sub. 3 supra.

Stock may be paid up in anything of value which is conclusive if in good faith.

Turner et. al. vs. Bailey et. al., 42 Pac. 115.

And whether in good faith or not, would they not be bound to any transaction to which they agreed and became a party?

As was said by the federal court:—

"Whatsoever may have been in fact the value of the property turned over to the company for its stock, the latter agreed to take it for the stock. The persons interested were the stockholders, and there was no dissent on the part of any person concerned in what was thus done. Neither any person thus holding stock nor any person who afterward became a stockholder by assignment from one who then held stock can now make complaint on behalf of the corporation against the lawfulness of that transaction. This I take to be the settled law on that subject."

Northern Trust Co. vs. 75 Fed. Cas. 936.

How far creditors are bound in such case, see,—

Schoville vs. Thayer, 105 U. S. 143; Paramlee vs. Price, 208 Ill. 544; Barr vs. Co., 125 N. Y. 236; Handley vs. Stutz, 139 U. S. 417.

11. "Articles" must contain commencement and termination of corporate existence; can not make longer than twenty-five years, but may take power by articles to renew perpetually. Perpetual existence can be secured if the option is exercised properly in the Articles of Incorporation.

R. S. 766, sec. 6, sub. 4.

12. "Articles" must contain what officers conduct the affairs and "time" when elected as "board of directors."

"By what officers or persons the affairs of the corporation are to be conducted and the time at which they are to be elected."

R. S. 766, sec. 6, sub. 5; Bates vs. Wilson, 24 Pac. 99.

13. "Articles" must contain highest indebtedness; there is no limit. This section repeals old section, limiting indebtedness to two-thirds amount of capital stock.

"The highest amount of indebtedness or liability to which the corporation is at any time to subject itself."

R. S. 766, sec. 6, sub. 6; Black Interpretation of laws, 112, 116, 359, 360.

Incurring indebtedness higher than articles state does not render stockholders personally liable.

Langan vs. Iowa M. Const. Co., 49 Ia. 317.

14. "Articles" must contain statement whether private property exempt, if it is desired to exempt stockholders from corporate debts.

"Whether private property is to be exempt from corporate debts. Unless so exempted, stockholders are liable for the debts of the corporation in the proportion to which their stock bears to the whole capital stock."

R. S. 766, sec. 6, sub. 7.

15. Must file copy Articles of Incorporation, certified to by county recorder, with auditor Territory.

R. S. 767, sec. 7; Acts 1903, No. 29, p. 46, sec. 1; Abbott vs. Smelting Co., 4 Neb. 416; Kaiser vs. Bank, 56 Iowa 104.

The omission of any one of the foregoing conditions precedent will render Articles of Incorporation defective and entirely insufficient under the laws of Arizona.

§ 100b. Conditions Subsequent.

16. A condition subsequent is something to be performed in the future, wherein a right will be enlarged, diminished, or defeated.

Articles must be "published at least six times" in some newspaper and an affidavit filed with the auditor, stating that such publication has been made according to law.

R. S., par. 768, sec. 8.

This section is to be taken in connection with the statute that follows it, which shows that the publication is not a condition precedent, but a condition subsequent, affecting the business of the corporation and not the Articles of Incorporation.

R. S., par. 769, sec. 9.

To publish is an act by which a thing is placed before the public eye by printing or multiplied copies in writing.

92 Am. Dec. 509.

If publication of articles is begun within three months and finished afterward, it is a substantial compliance with the statute.

Thornton vs. Balcom, 85 Ia. 201.

All contracts made within three months after articles are filed are valid without publication.

Thornton vs. Balcom supra.

Publication must be substantially complied where it affects the articles, else it will furnish grounds for action to dissolve the corporation by the State.

Cleggs vs. Co., 61 Ia. 121; Biglow vs. Gregory, 73 Ill. 197; Field vs. Cook, 16 La. Am. 153; Hunt vs. Salsbury, 55 Mo. 310; Ind. Min. Co. vs. Herkiner, 46 Ind. 142; Holmes vs. Gilliland, 41 Barb. 568.

The power to dissolve a corporation for failure to publish articles depends on whether the law makes publication a condition precedent or condition subsequent.

Under the laws of Arizona publication being a condition subsequent purporting to validate, as it were, the acts or contracts of the corporation, it is extremely doubtful if the State would interfere, or could disturb the franchise of the corporation if it failed entirely to publish Articles of Incorporation, because the State would have no interest in the fact whether the newspapers received a fee for publication or not, and it would hardly be expected that the State would interfere and mulct itself to assist a newspaper to get business; the courts would hardly interfere, because if the corporation transacted business as a *de facto* corporation, its contracts would be valid between the parties, and both parties be denied the right to take advantage of it under the law of estoppel.

A creditor would have no interest in depriving the corporation of its franchise in order to hold the incorporation as partners, as is the case in some of the States.

Davenport N. B. vs. Davis, 43 Ia. 424; 15 N. W. 865.

There is no good purpose served in the publication of Articles of Incorporation if it be founded on the reason of publicity of the corporation, that people may know that the concern is a corporation rather than a partnership, as under the laws of notice, when the articles are recorded, all have the regular and accepted constructive legal notice, that all instruments recorded impart, and certainly it could add nothing to that notice that some little newspaper with fifty or more circulation publishes the article, that none of its subscribers read.

The idea that publication of articles gives any beneficial result is rapidly on the decline, as now only ten out of fifty

States and Territories of the Union require publication, and all but one of them are west of the Mississippi River.

The reason for publication is gone; the State gets nothing out of it, and it remains a newspaper graft, imposed upon incorporators by over-generous legislative assemblies.

§ 101. Presumption of Due Incorporation.

Parties are presumed to be legally incorporated until the contrary is shown in a regular proceeding brought for the purpose.

Rev. Stat. 779, sec. 19.

This regular proceedings must be brought by the Territory.

"No corporation formed under the laws of this Territory shall be dissolved, or its rights impaired, except by judicial decree."

Rev. Stat., par. 28.

Neither the corporation nor those who deal with it are permitted to reply on the want of legal organization as a defense.

Rev. Stat. 780, sec. 20.

§ 101a. Dissolution of Corporations.

Corporations may also be dissolved for any of the following causes or grounds in court by proper application of the proper party:—

1. Failure to appoint an agent for service of process.
2. Failure to file a written notice showing that the appointment has been made with the auditor of the Territory.
3. Or revoke appointment of agent without appointing another.
4. Or by majority of the stock outstanding voting to dispose of all its assets.
5. Or majority voting that the corporation be dissolved.
6. Or majority voting that it ceases to use or exercise its corporate franchise.
7. Or when the directors authorized, by majority of outstanding stock, shall have disposed of the corporate assets.

8. Or majority dissolved or attempted to dissolve, or secure the dissolution of the corporation.

9. Or majority attempted to do any of the aforesaid things.

10. Or majority disposed of all its assets.

Session Laws 1903, p. 134.

Many of the features of this law are scarcely understandable, for that to dissolve a corporation because all of its assets had been disposed of, or to dissolve it because it had been dissolved, or dissolve it because it had ceased to use its franchise, and was dissolved thereby by non-user, and many other thereafter, is certainly beyond the fathom of an ordinary mortal, for a beneficial result to any one and a mere conglomeration of nonsensical requirements.

Charter lapse for non-user for five years, but failure to elect officers or hold meetings is not such non-user as will cause lapse of charter rights.

R. S. 772, sec. 12; State vs. Simonton, 78 N. C. 57; State vs. Barron, 58 N. H. 370; W. C. M. Co. vs. Burns, 114 N. C. 363; State vs. Co., 58 Minn. 330; 59 N. W. 1048; State vs. Co., 59 Kan. 151; 52 Pac. 422; State vs. Co., 45 Wis. 579; W. & Etc. Co. vs. Kit, 4 Saw. 44; People vs. Bank, 129 Ill. 618.

§ 101b. Forfeiture of "Articles" for Other Causes.

At common law corporations were dissolved by application to the court by the proper officials of the commonwealth by extraordinary writ of *quo warranto*.

"For the Commonwealth may waive any provision of any condition, express or implied, on which the corporation was created; and courts can not give judgment for the seizure by the Commonwealth of the franchise of any corporation unless the Commonwealth be made a party in interest to the suit and assent to the judgment."

Commonwealth vs. Co., 5 Mass. 230.

The State may waive conditions imposed upon formation of corporations.

Matter of Brooklyn Elevated Railway Co., 125 N. Y. 434; 526 N. E. 474.

The courts have no inherent power to declare a forfeiture of the charter of a corporation on any grounds.

Denicke vs. Co., 80 N. Y. 559; Wheeler vs. Co., 143 Ill. 197.

Courts will not dissolve a corporation except upon "solid, weighty, and cogent reasons for violation of a prohibitory statute."

Moore vs. State, 71 Ind. 478; State vs. Bank, 10 Oh. St. 535.

"Before court will dissolve must be something more than accidental negligence, . . . excess of power, mistake in executing powers not wilfully done," or some other matter not of a substantial nature not tending to produce evil consequences.

State vs. Co., 8 R. I. 182.

"State does not concern itself with quarrels of private individuals," but when the welfare of the people is threatened, State will interfere.

People vs. Co., 121 N. Y. 582; 24 N. E. 834; 20 Ark. 443.

§ 101c. General Rule Equity to Dissolve.

"The general rule as laid down by text writers is that the general jurisdiction of equity over corporations does not extend to the power of dissolution of the corporation or to the winding up of its affairs, sequestrating the corporate property and effects; and in that connection appointing a receiver, unless such jurisdiction is expressly conferred by statute."

Beach Mod. Eq. Juris, sec. 967; 1 Cook, Stock, Stockh. and Corp. Laws, sec. 629; Arents vs. Blackburn Durham Tobacco Co., 101 Fed. 338; Reason of rule stated in Silver Mines vs. Brown, 19 U. S. App. 209; 7 C. A. 415; 58 Fed. 647; 2 L. R. A. 778.

While this is recognized as the general rule, yet it is also said by the same court that equity "will always grant equitable relief against such a corporation whenever a sufficient case for relief is shown upon the ordinary principles of equity jurisprudence."

"A recognized ground of relief in equity is when the affairs

of the corporation are not satisfactory, when it is in the midst or is threatened with disaster, when further prosecution of its business will lead to loss and insolvency.”

Hayden vs. Directory Co., 42 Fed. 875; Arents vs. Blackburn Durham Tobacco Co., 101 Fed. 338.

It is said equity has jurisdiction to wind up corporations and to appoint a receiver therefor for abuse of trust, misappropriation of funds, and grant restitution.

Miner vs. Bell Isles Ice Co., 93 Mich. 97.

§ 101d. Liability of Stockholders.

Stockholders are liable for the unpaid installment of the purchase of stock, or for unpaid stock transferred to them to defraud creditors.

R. S. 776, sec. 16.

Corporation may provide sinking fund and loan same on security.

R. S. 777, sec. 17.

§ 101e. Interpretation of Charters or Articles of Incorporation.

Confusion often arises respecting the rules by which a charter or Articles of Incorporation are to be interpreted. It being held that a charter is a legislative contract, where it was granted by special enactment, much more would it be a contract where the articles were obtained under general incorporating acts by compliance with their terms by written articles signed, acknowledged, and filed.

Having been held to be a threefold contract, its interpretation would come within the scope of the ordinary contract. See post.

Respecting the interpretation of a contract of this character, the Supreme Court of the United States furnishes the rule; to wit:—

“A great deal of argument at the bar was devoted to the consideration of the proper rules of construction to be adopted in the interpretation of legislative contracts. In this there is no difficulty. All contracts are to be construed to accomplish the intention of the parties; and in determining their different

provisions, a liberal and fair construction will be given to the words, either singly or in connection with the subject matter. It is not the duty of a court, by legal subtlety, to overthrow a contract, but rather to uphold it and give it effect; and no strained or artificial rule of construction is to be applied to any part of it. If there is no ambiguity and the meaning of the parties can be clearly ascertained, effect is to be given to the instrument used, whether it is a legislative grant or not. In the case of the Charles River Bridge (11 Pet. 544), the rules of construction known to the English common law were adopted and applied in the interpretation of legislative grants, and the principle was recognized that charters are to be constructed most favorably to the State, and that in grants by the public nothing passes by implication. This court has repeatedly since re-asserted the same doctrine, and the decisions in the several States are nearly all the same way. The principle is this: That all rights which are asserted against the State must be clearly defined, not raised by inference or presumption, and if the charter is silent about a power, it does not exist. If, on a fair reading of the instrument, reasonable doubt arises as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State; and where it is susceptible to two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State. But if there is no ambiguity in the charter, and the powers conferred are plainly marked, and their limit can be readily ascertained, then it is the duty of the court to sustain and uphold it, and to carry out the true meaning and intention of the parties to it. Any other rule of construction would defeat all legislative grants and overthrow all other contracts."

Black Interpt. Laws 319 320; The Bingham Bridge, 3 Wall 51-74.

Other illustrations of charters construed by U. S. Court and State courts.

Or. Ry. Co. vs. Or. Ry. Co., 130 U. S. 1; 9 s. ct. 409; Union Nat. Bank vs. Mathews, 98 U. S. 621; S. L. vs. T. Co., 157 Ill. 641; 42 N. E. 153; Piker vs. Leo, 133 N. Y. 519-30; N. E. 598; Bridge Co. vs. Ferry Co., 29 Conn. 221; Nat. Bank vs. Co., 41 Oh. St. 1; Wheeler vs. Co., 45 Pac. 316; 14 Wash. 630; Black vs. Co., 22 N. J. Eq. 130.

CHAPTER VII.

CORPORATE STATUS.

§ 102. Corporate Status, When a Territory Becomes a State.

The status of a corporation formed under the laws of a Territory after that Territory becomes a State depends on the acts of Congress as laid down in the organic act of the Territory, or statutes passed by Congress for the regulation of the Territory.

Under the act of Congress or its organic act for the Territory of Arizona, a corporation has a *quasi* national sanction or status, because Congress has authorized the passage of corporate laws or general incorporating act by the Legislature of Arizona Territory and is bound thereby.

The United States statute or organic act on this point is as follows:—

“The legislative assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposit (but not of issue), loan, trust, and guarantee associates, and for the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of land in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association.”

Sec. 1889, as amended by I. Supp. R. S. U. S., p. 504, being sec. of chap. 818, 49th Cong., 1st Sess., July 30, 1886.

The Territorial Legislature having the power to pass general incorporation laws, has passed such law by leave and by virtue and by sanction of congressional authority. It follows, therefore, that when a corporation is formed under

the laws of Arizona, it becomes a legislative contract between the incorporators and the Territory of Arizona, sanctioned and authorized by the laws of the Congress of the United States, and its franchise becomes a valuable property right vested in the incorporators by reason of such authority, and protected by the very authority, the laws of the Congress, from whence it came.

As was said by the Supreme Court of the United States:—

“The right and privilege, or franchise, as it may be termed, of being a corporation is of great value to its members, and is considered as property, separate and distinct from the property which the corporation itself may acquire.”

Horn Silver Mining Co. vs. State of N. Y., 143 U. S. 305.

§102a. Vested Property Right.

This vested property, protected as it is not only by the acts of the Legislature, but by the laws of Congress as well, becomes such a property as can not be invaded by the Congress of the United States, because under article 5 of the amendments of the Constitution of the United States it is said:—

“No person . . . shall . . . be deprived of life, liberty, or property without due process of law.”

See Articles in addition to, and Amendment of, the Constitution of the United States, Article V.

§ 102b. Equal Protection of the Law.

A corporation is a “person” under the fourteenth amendment of the Constitution that can not be denied the equal protection of the law.

Pembina etc. Min. Co. vs. Penn., 125 U. S. 180; Santa Clara Co. vs. S. P. Ry. Co., 118 U. S. 394; 24 Am. and Eng. Ry. Cases, 523; Minneapolis etc. Ry. Co. vs. Beckwith, 129 U. S. 26.

The equal protection of the law certainly could mean nothing else than the protection under the law and the Constitution from every source. Certainly it could mean no less

than that a right granted by the Congress or a property right emanating from the Congress as its source would be protected by the safeguards furnished by the Constitution with equal force as any other right emanating from the Congress.

A corporate franchise being a property right, and by the Articles of Incorporation becomes vested in the incorporators, becomes a vested property right which can not be taken or removed except by due process of law or by just compensation. These express constitutional inhibitions are binding not only upon individuals and the Legislature, but *ipso facto* upon the Congress of the United States as well.

Congress exists by reason of the Constitution and by virtue of its power above which it can not rise, neither can Congress its provisions abridge or deny.

§ 102c. Due Process of Law.

Under Article Five of Amendments, the franchise of a corporation is a property right, the removal or destruction of which is not left to Congress, but to the courts by "due process of law."

"Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

3 Story Const. 264-661; Cooley Const. Lim. 441; 12 N. Y. 209; 5 Mich. 251; 6 Cold 233; 49 Cal. 403.

Speaking of "due process of law," the Supreme Court of the United States says:—

"Whatever difficulty may be experienced in giving to these terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They mean a course of legal proceedings according to whose rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights, to give such proceedings any validity, there must be a tribunal competent

by its Constitution; that is, by the law of its creation to pass upon the subject-matter of the suit; and that involves merely a determination of the personal liability of the defendant; he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance."

95 U. S. 733; 55 Ala. 599; 55 Miss. 468.

"Due process of law" as used in the Constitution can not mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property.

3 N. Y. 511-517; *Tayer vs. Porter*, 4 Hill 140; 10 N. Y. 374-397.

Due process of law must mean at all events according to the settled judicial procedure of the country. Certainly Congress has not up to this time attempted to remove a private right of property by any enactment, nor is it supposable hardly that it ever will, *a fortiori*, will it ever where that right has been granted by Congress, such as the sanction or authorizing of the granting of franchises of corporations by a territorial Legislature.

Am. and Eng. Ency. Law, vol. 6, p. 43.

§ 102d. State Inhibited.

The State is inhibited by the Constitution from interfering with corporate existence by reason of Sec. 10, Art. 1 of the Constitution, which says: "No State shall . . . pass any . . . law impairing the obligation of contracts."

§ 102e. Franchise Right Can Not Be Sold.

A corporate franchise is a property right that can not be sold by the corporation; it is said by the Supreme Court of Massachusetts, in *Commonwealth vs. Smith*, 10 Allen 448:—

"The franchise to be a corporation clearly can not be transferred by any corporate body of its own will. Such a franchise is not in its own nature transmissible, . . . and although the franchise to exist as a corporation is distinguishable from the franchise to be enjoyed and used by the corporation after its creation, yet the transfer of the latter differs

essentially from the mere alienation of ordinary corporate property."

Thomas vs. Railroad Co., 101 U. S. 71; Central Trans. P. Co. vs. Pullman P. Car Co., 139; U. S. 24; St. Louis etc. R. Co. vs. Terre Haute etc. R. Co., 145 U. S. 393; Clark on Corporations, 144, 145 Cases.

It is therefore seen that a corporation, formed under the laws of Arizona, possesses a corporate franchise deemed by the highest court in the land to be a valuable right to its members, a vested right protected by the Constitution from the invasion of Congress and the State, as well as having its essential and original existence from and by authority of the Congress of the United States. How could a better foundation be laid to erect the right to endure?

CHAPTER VIII.

ARTICLES OF INCORPORATION A CONTRACT.

§ 102f. **Threefold Contract.**

In order to form a private corporation under general incorporation acts, it must be understood that the charter or Articles of Incorporation is a contract, and to create a corporation is to enter into a contract, the analysis of which contract reveals threefold elements or three distinct contracts in one; to wit:—

1. It is a contract between the corporation and the State.
2. It is a contract between the stockholders and the State.
3. It is a contract between the corporation and the stockholders.

These distinct parts of the charter do not encompass the contract between the members of the company to incorporate, entered into prior to incorporation, but is the result of it.

§ 103. **Charter a Contract between Corporation and State.**

1. As a contract between the State and corporation, the charter is protected by that provision of the Constitution of the United States which reads that,—“no State shall . . . pass any . . . law impairing the obligation of contracts.”

Constitution of the United States, Art. I, Sec. 10.

This principle was first applied to corporations in the Dartmouth College case vs. Woodward, 4 Wheat 518, where Chief Justice Marshall said:—

“We are also satisfied that the rights legally vested in this or in any corporation can not be controlled or destroyed by any subsequent statute, unless a power for that purpose be reserved to the Legislature in the act of incorporation.”

In Pearsall vs. Great Northern Ry., 161 U. S. 646, the United States Supreme Court, through Justice Brown, speaking at great length of the doctrine that the State has no right

to pass laws impairing the obligations of a charter contract between the stockholders and the State, said:—

“The doctrine of this case has been subjected to more or less criticism by the courts and the profession, but has been re-affirmed and applied so often as to have become firmly established as a canon of American jurisprudence.”

It is, therefore, beyond the power of the State to repeal or impair the charter of corporation unless such power was expressly reserved by legislative enactment at the time the charter was granted or accepted.

Cook on Corporation, vol. 2, par. 494, p. 891; State Bank vs. Knoop, 16 How. 369.

§ 104. The Charter or Articles a Contract between the Stockholders and State.

2. As a contract between the stockholders, or corporators, and the State, the charter or articles are a binding contract, also protected by the same provision of the United States Constitution.

Const. of U. S., Art. 1, Sec. 10.

“A charter of incorporation granted by a State creates a contract between the State and the corporators, which the State can not violate.”

Wilmington R. R. vs. Reid, 13 Wall 264.

“It has been the settled law of this court since the decision in the Dartmouth College case.”

Delaware R. R. Tax, 18 Wall 206; Sinking Fund Cases, 99 U. S. 700.

“That an act of incorporation is a contract between the State and the stockholders is held for settled law by the federal courts and by every State court in the Union. All the cases on the subject are saturated with this doctrine. It is sustained not by a current, but by a torrent of authorities. No judge who has a decent respect for the principle of *stare decisis*—that great principle which is the sheet-anchor of our jurisprudence—can deny that it is immovably established.

“If anything is settled, it is this rule of construction that a corporation takes nothing by its charter except what is plainly, expressly, and unequivocally granted.”

Pennsylvania vs. Commonwealth, 19. Pa. St. 144.

§ 105. **The Charter or Articles a Contract between the Corporation and Stockholders.**

3. As a contract between the corporation and the stockholders, the charter is a limitation on the extent of corporate business or the scope of its operation. Any attempt on the part of the corporation to transact business not designated, or abandon the business designated by the articles, would be without the scope of its charter power and beyond its purpose or object; such an act is termed an *ultra vires* act.

Any stockholder may object to such an act and stop it, if he choose.

Livingston vs. Lynch, 4 Johns, ch. 573.

His remedy would be to enjoin the act before it was done, if he knew it was going to be done, or by bill in equity to set aside if the act had already been done before he discovered it.

Cook on Corporation, vol. 2, par. 669, p. 1336.

"A stockholder may file a bill to enjoin or set aside an *ultra vires* act, even though every other stockholder is opposed to him."

Hoole vs. Great Western Ry., L. R. 3 Ch. App. 262;
Beeman vs. Rufford, 1 Sim. N. S. 550.

A majority of the stockholders can not ratify an *ultra vires* act.

Bagshaw vs. Eastern Union Ry., 19 L. J. (Ch.) 410;
Hare vs. London etc. Ry., 30 L. J. (Ch.) 817, 829;
Winch vs. Birkenhead, etc. Ry., 16 Jur. 1035.

A stockholder in a trust company may file a bill in equity to enjoin the company from paying an illegal income tax to the federal government.

Pollock vs. Farmers' L. & T. Co., 157 U. S. 429.

The courts, however, are leaning toward a limitation of the application of the rule of *ultra vires*, and where the act is entirely consummated and there is no fraud, the courts would be very reluctant to overturn the transaction, even if it were without the scope of the corporate powers. And they would not overturn it if it would work an injury to the other contracting party, and in favor of the corporation.

For instance, in *Salt Lake City vs. Hollister*, 118 U. S. 256, Mr. Justice Miller said:—

“The truth is, that, with the great increase in corporations in very recent times, and in their extension to nearly all the business transactions of life, it has been found necessary to hold them responsible for acts not strictly within their corporate powers, but done in their corporate name, and by corporation officers who were competent to exercise all the corporate powers.”

§ 106. Who May Object to Ultra Vires Acts.

At common law *ultra vires* acts could be objected to,—

1. By the State.
2. By the stockholders.
3. By the corporation.
4. By the other contracting party.

Cook on Corporations, vol. 2, par. 668, p. 1335.

§ 107. Contract to Create Corporation.

The right to enter into a contract to form a corporation is a right belonging to individuals, and may be entered into wherever the contracting parties may be. The members, before they take steps to incorporate, must come to some kind of an understanding about what each and every one is going to do and how he is going to do it. Whether this understanding is reduced to writing or remains a mere verbal understanding, it forms the basis or structure upon which the corporate contract is finally built.

1 Mor. Priv. Corp., sec 24; *Louman vs. Railway Co.*, 30 Pa. St. 42.

And whether this initiatory contract be merged in the charter and lost sight of or not, it nevertheless must happen before the formation of the triple corporate contract relation above pointed out.

§ 108. Conditions Precedent in Creating a Corporation.

The various legislative enactments of the States are clear and explicit relative to the proceedings by and through which a corporation may be created. Usually a number of things

are to be performed prior to, as well as certain specific statements must be set forth and declared in the charter or articles without which conditions precedent no legal corporation can be created, some of which have heretofore been pointed out and applied.

To illustrate: It was a condition precedent for the common council of a city to declare by resolution that it was expedient for the city to have water-works constructed, but inexpedient for the city to construct such water-works, then it should be lawful for private persons to construct such works. Without such a resolution, parties sought to construct and operate a water-works. Held, such a resolution was a condition precedent to the legal existence of the corporation.

Atty. Gen. vs. Houchett, 42 Mich. 436; 4 N. W. 182.

So held where a less number sought to incorporate than stated by statute.

Montgomery vs. Forbes, 148 Mass. 249; 19 N. E. 342; and 1 Cumming, Cas. Priv. Corp. 69; State vs. Critchett, 37 Minn. 13; 32 N. W. 787; Broderip vs. Salomon 2 Ch. 323.

So held where the statute required written articles of agreement between the incorporators.

Utley vs. Tool Co., 11 Gray (Mass.) 139; Unity Ins. Co. vs. Cram, 43 N. H. 636.

Where the statute requires written articles of association, such paper must be executed as any other contract to be valid, as has been said:—

“It is obvious that the three or more persons must sign and execute these articles in such a manner as to come within the well-established rules of law prescribing the elements necessary to constitute a signing or execution which will make the paper executed the legal and binding instrument of the person who executes it. Their signatures must be procured, without fault on their part by fraud; nor must they be affixed with the understanding and upon condition that the paper is not to take legal effect, and be valid and binding, either pres-

ently, or at some fixed and definite time, or upon the happening of some contingency or fulfilment of some condition within the bounds of possibility. Nor is it obvious how such an instrument as this, more than any other, can have life and binding force if executed only to take effect upon the happening of some event, unless it is shown that the event has happened."

Corey vs. Morrill, 61 Vt. 598; 17 Atl. 840.

So held where the statute required the number of directors or names and number of directors.

Reed vs. Railway Co., 50 Ind. 342.

So held where a statute required names and places of residence of subscribers.

Busenback vs. Road Co., 43 Ind. 265; Miller vs. Road Co., 52 Ind. 51.

So held where the plan for carrying on the business shall be stated.

State vs. Central Ohio Mut. Relief Assn., 29 Ohio St. 399.

So held where it was required that the place of business should be stated.

Harris vs. McGregor, 29 Cal. 124; Montgomery c. Forbes, 148 Mass. 249; 19 N. E. 342; 1 Cummings, Cas. Priv. Corp. 69; Clegwoo vs. Grange Co., 41 Ia. 122.

So held where the purpose of the corporation was required to be stated.

Wesley vs. Ditching Co., 32 Ind. 138; O'Reiley vs. Draining Co., Id. 169; Attorney General vs. Lorman, 59 Mich. 157; 26 N. W. 311; In re Crown Bank, 44 Ch. Div. 634.

So held where it was required that a majority of the associates were present and voted at the election of directors.

People vs. Selfridge, 52 Cal. 331.

So held where the Articles of Incorporation should be signed by the incorporators.

Kaiser vs. Bank, 56 Iowa 104; 8 N. W. 772.

The signature of the incorporators does not require that

they give their full name. Their initials or their usual signature is all that is required.

State vs. Beck, 81 Ind. 500.

So held where it was required that the Articles of Incorporation be acknowledged by the incorporators.

Doyle vs. Mizner, 42 Mich. 332; 3 N. W. 968; Kaiser vs. Bank, 56 Iowa 104; 8 N. W. 772.

So held where the statute required five persons to sign and acknowledge the Articles of Incorporation, and only four had signed and acknowledged.

People vs. Montecito Water Co., 97 Cal. 276; 32 Pac. 236.

However, it will not invalidate the Articles of Incorporation should the notarial certificate or acknowledgment fail to show that the persons acknowledging were personally known to him.

People vs. Cheeseman, 7 Colo. 376; 3 Pac. 716.

So held where the statute required the Articles of Incorporation to be filed in a certain place, office, or court.

Abbott vs. Smelting, etc. Co., 4 Neb. 416; Kaiser vs. Bank, 56 Iowa 104; 8 N. W. 772.

So held where the statute required that notice of organization stating certain facts should be published.

Clegg vs. Grange Co., 61 Iowa; 121 N. W. 865; Childs vs. Hurd, 32 W. Va. 66; 9 S. E. 362; Bigelow vs. Gregory, 73 Ill. 197; Hurt vs. Salisbury, 55 Mo. 311; Walton vs. Riley, 85 Ky. 413; 3 S. W. 605; Loverin vs. McLaughlin (Ill. Sup.), 44 N. E. 99.

So held where the stock was required to be subscribed in good faith to a certain amount as a condition precedent.

People vs. Chambers, 42 Cal. 201; Sweney vs. Talcott, 85 Iowa 103; 52 N. W. 106; Lake Ontario, A. & N. Y. R. Co. vs. Mason, 16 N. Y. 451; Franklin Fire Ins. Co. vs. Hart, 31 Md. 59; Holman vs. State, 105 Ind. 569; 5 N. E. 702.

Where the statute does not require subscriptions to corporate existence, the corporation may organize and the stock

be subscribed to afterward, as in such case it is not a condition precedent to corporate existence.

Perkins vs. Sanders, 56 Miss. 733; Hammond vs. Straus, 53 Md. 1; Minor vs. Bank, 1 Pet. 46; Johnson vs. Kessler, 76 Iowa 411; 41 N. W. 57; National Bank vs. Texas Ins. Co., 74 Tex. 421; 12 S. W. 101.

Where the statute fixes certain things to be done and the articles claim more than the statute allows, this will not invalidate the articles of association, as it may be rejected as mere surplus.

People vs. Cheeseman, 7 Colo. 376; 3 Pac. 716.

§ 109. Substantial Compliance.

A substantial compliance with a statute will be held sufficient, but this does not mean that any of the requirements may be treated by the incorporators as unimportant, for the reason that they are statutory requirements, legal requirements, and placed there by the State; and whatever might be the reason that surrounded their enactment, it is not within the power or province of the incorporators to reject any of them.

People vs. Water Co., 97 Cal. 276; 32 Pac. 236, is a case where the statute required five subscribers, and also that they all acknowledge the same before incorporation. Five signed, but only four acknowledged. This was held not to be sufficient, nor even a substantial compliance with the statute.

Clegg vs. Grange Co., 61 Iowa 121; 15 N. W. 865.

Where the statute required that "the manner of carrying on the business of said association" should be stated, was not complied with by the statement that "the manner of carrying on the business, especially such as the association shall from time to time prescribe by rules, regulations and by-laws not inconsistent with the laws of the State."

State vs. Association, 29 Ohio St. 299; In re Crown Bank, 44 Ch. Div. 634.

§ 110. Directory Provisions.

The provisions heretofore stated and enumerated under the

head of "conditions precedent" are said to be mandatory provisions of the statute in contradistinction to those provisions that would be directory merely. Provisions that are merely directory, even though by the statute required to be performed, would not vitiate the charter. Whether a particular provision is mandatory or directory would be determined by the intention of the Legislature to be gathered from the law itself.

Utley vs. Union Tool Co., 1 Gray (Mass.) 139.

To further illustrate: The Massachusetts statute provided that a majority of those signing the Articles of Incorporation should call the first meeting, and that was held to be a provision merely directory and a failure to comply therewith did not prevent the corporation from coming into existence.

12 Allen (Mass.) 362; 1 Cummings, Cas. Priv. Corp. 67; Walworth vs. Brackett, 98 Mass. 98; Cross vs. Mill Co., 17 Ill. 54; Proprietors of City Hotel in Worcester vs. Dickinson; 6 Gray (Mass.) 586, 593; Eakright vs. Railroad Co., 13 Ind. 404; Humphreys vs. Mooney, 5 Colo. 282; Braintree Water Supply vs. Town of Braintree, 146 Mass. 482; 16 N. E. 420.

§ 111. Conditions Subsequent to Doing Business.

Where the statute prescribes conditions precedent, the performance of which must be had before it can become a legal and existing entity, may also prescribe other conditions that it must perform before it begins doing business. Non-compliance with a condition subsequent of this character will not prevent the corporation from coming into legal existence, and whether or not the charter could be forfeited for non-compliance with the conditions subsequent would depend upon the particular statute and the penalty therein prescribed.

St. Joseph & I. R. Co. vs. Shambaugh, 106 Mo. 557; 17 S. W. 582; Toledo & Ann Arbor R. Co. vs. Johnson, 49 Mich. 148; 13 N. W. 492; Merrick vs. Governor Co., 101 Mass. 381.

To further illustrate: A statute of the State of Wisconsin provided that before any corporation organized under such statute should commence business, the officers must publish the Articles of Incorporation in some newspaper, and make a certificate setting forth the purpose of the corporation, and deposit the same with certain officers. It was held that a failure to comply with these conditions subsequent did not affect the legal existence of the corporation.

Harrod vs. Harmer, 32 Wis. 162; *In re Shakopee Mfg. Co.*, 37 Minn. 91; 33 N. W. 219; Baker vs. Backus Admr., 32 Ill. 79; Lord vs. Association, 37 Md. 320; Hammond vs. Straus, 53 Md. 1, 11; Holmes vs. Gilliland, 41 Barb. (N. Y.) 568.

In the case of Mokelumne Hill Canal Min. Co. vs. Woodbury, 14 Cal. 424, it is said:—

“There is a broad and obvious distinction between such acts as are declared to be necessary steps in the process of incorporation and such as are required of the individuals seeking to become incorporated, but are not made prerequisites to the assumption of corporate powers. In respect to the former, any material omission will be fatal to the existence of the corporation, and may be taken advantage of collaterally in any form in which the fact of incorporation can properly be called in question. In respect to the latter, the corporation is responsible only to the government, and in a direct proceeding to forfeit its charter.”

Hyde vs. Doe, 4 Sawy 133; Fed. Cas. No. 6969.

§ 112. Who May Object to Corporate Existence.

No one but the Attorney-General of the State can institute a suit to forfeit the charter of a corporation, while conditions precedent must always be performed in order to bring the corporation into legal existence. It does not follow that any one can institute proceedings to forfeit the charter, even though they have not followed the statute enacted for their incorporation. Even the State can not always raise the objection, as we shall presently see.

A stockholder can not institute such suit.

North vs. State, 107 Ind. 356; Baker vs. Backus, 32 Ill.

79; *Commonwealth vs. Union Ins. Co.*, 5 Mass. 230; *State vs. Pateerson, etc. Turnp. Co.*, 21 N. J. L. 9; *Murphy vs. Farmers' Bank*, 20 Pa. St. 415; *Rice vs. National Bank*, 126 Mass. 300; *Folger vs. Columbian, etc. Ins. Co.*, 99 Mass. 267.

Where refused to recognize a dissolution decree by a New York court at the instance of a stockholder.

Raisbeck vs. Oesterricher, 4 Abb. N. Cas. 444, where the plaintiff claimed that the incorporation was irregular.

Neither can a corporate creditor.

Gaylord vs. Fort Wayne, etc. R. R. 6 Bliss 286; S. C. 10 Fed. Cas. 121.

A judgment forfeiting the charter of a private corporation, where the State is not a party to the suit, is a nullity.

Puckett vs. Abney, 84 Tex. 645.

Nor can the municipal authorities by reason of the change of route by a railroad.

Moore vs. Brooklyn, etc. R. R., 108 N. Y. 98.

Nor can a person who is overcharged on a turnpike maintain an action to forfeit its charter. An action must be instituted by the proper authorities of the State, and no other officers can maintain such an action even though a statute prescribes a forfeiture for non-payment of taxes; for instance, the secretary of state can not institute the action.

Greenbrier Lumber Co. vs. Ward, 30 W. Va. 43.

Neither can a stockholder sustain an action to oust the charter of a corporation on the ground that it is a combine forming a monopoly. This question alone is with the State. A stockholder is estopped from complaining. He is presumed to have participated and understood the purposes of the corporation.

Coquard vs. National L. O. Co., 49 N. E. Rep. 563 (Ill.).

In each and every case the objection can not be raised collaterally by the State even.

North vs. State, 107 Ind. 356; 8 N. E. 159.

§ 112a. The Rule Stated.

"The reason is that if rights and franchises have been usurped, they are the rights and franchises of the sovereign, and he alone can interpose. Until such interposition, the public may treat those possessing and exercising corporate powers under color of law as doing so rightfully. The rule is in the interest of the public and is essential to the safety of business transactions with a corporation."

Duggan vs. Investment, 11 Colo. 113; 17 Pac. 105

When the question is raised as to the legal existence of a corporation, the questions will be as to whether the corporate existence is *de jure* existence, or a *de facto* existence, or neither. A corporation *de facto* is a corporation existing for all practical purposes as a corporate body, but it, because of failure to comply with some provision of the law, has no legal right to corporate existence as against the State. A corporation *de jure* is a corporation in law as well as in fact, and it can not be questioned by the State either directly or collaterally. A corporation *de facto* has corporate existence as against the State when it is attacked collaterally, and has such right as against private individuals whether they attack it directly or collaterally.

It has been held that "a corporation *de facto* may legally do and perform every act and thing which the same entity could do and perform were it a *de jure* corporation. As to all the world except the paramount authority under which it acts, and from which it receives its charter, it occupies the same position as though in all respects valid; and even as against the State, except in direct proceedings to arrest its usurpation of power, it is submitted, its acts are to be treated as efficacious."

The rule that applies to a domestic corporation applies with equal force to a foreign corporation.

Bank of Toledo vs. International Bank, 21 N. Y. 542; Lancaster vs. Improvement Co., 140 N. Y. 576; 35 N. E. 964; Wright vs. Lee, 4 S. D. 237; 55 N. W. 931.

If, however, a corporation is neither *de jure* nor *de facto*,

it has no standing whatever, and its existence can be attacked directly or collaterally by any individual as well as the State, unless, however, there is some element of estoppel. There is no estoppel as to the State, but applies only to individuals.

Scheufler vs. Grand Lodge, 45 Minn. 256; 47 N. W. 799; Perine vs. Grand Lodge, 48 Minn. 82; 50 N. W. 1022; Narragansett Bank vs. Atlantic Silk Co., 3 Metc. (Mass.) 287; Farmers' Loan & Trust Co. vs. Toledo, A. A. & N. M. Ry. Co., 67 Fed. 49; Callender vs. Railroad Co., 11 Ohio St. 516; Stewart Paper Mfg. Co. vs. Rau, 92 Ga. 511; 17 S. E. 748; Fitzpatrick vs. Rutter, 160 Ill. 282; 43 N. E. 392; Hamilton vs. Railroad Co. (Pa. Sup.), 23 Atl. 53; Bon Aqua Imp. Co. vs. Standard Fire Ins. Co., 34 W. Va. 764; 12 S. E. 771; Independent Order of Mutual Aid vs. Paine, 122 Ill. 625; 14 N. E. 42; see also Dooley vs. Cheshire Glass Co., 15 Gray (Mass.) 494; 1 Cumming, Cas. Priv. Corp. 418.

To understand the difference between a *de facto* corporation and a pretended corporation is a very difficult undertaking, as there does not appear to be any harmony in the adjudicated cases. As clear a statement and as near to the proposition as has been reached will be found in 1 Thomp. 495, where Judge Thompson says:—

“It is impossible to formulate a rule on the subject of *de facto* corporations, which will be applicable in all American jurisdictions, or which will receive uniform support from the decisions in any one such jurisdiction. Those decisions oscillate between two extreme views: (1) That where a body of men act as a corporation, and in the ostensible possession of corporate powers, it will be conclusively presumed, in all cases except in a direct proceeding against them by the State to vacate their franchises, that they are a corporation. (2) That the conditions named in statutes authorizing the organization of corporations are conditions precedent, and must be strictly complied with, or the corporation does not exist; and that the want of compliance with any one condition precedent may be shown by any one, in a private litigation with the pretended corporation, unless he has estopped himself by his conduct from challenging its corporate existence, and frequently without reference to the question of estoppel.”

The evidence required to establish a corporation *de facto* must show, first, the bona fide attempt to incorporate; second, the existence of some kind of a charter under some law where a corporation could lawfully be created; third, the user of the party to the suit of the right claimed under such charter or law.

Eaton vs. Walker, 76 Mich. 579; 43 N. W. 638; Finnegan vs. Noernberg, 52 Minn. 239; 53 N. W. 1150; Duggan vs. Investment Co., 11 Colo. 113; 17 Pac. 105.

§ 113. Acceptance of the Charter.

A corporation is modeled upon a State or nation, and is called the body politic as well as corporate, indicating its origin and derivation. It is supposed that the corporation possesses some sort of sovereign power. This is, however, a mistake, as it has no such authority unless it be especially granted it by the State. The right of eminent domain, for instance, may be granted to a corporation. The charter of the corporation being a contract, it is said must be accepted, to have any effect. Like every contract, there must be consent both of the Legislature by and through its legislative enactment, and on the part of the persons incorporating. The various acts of the general assemblies offering to persons generally the right to incorporate is consent on the part of the State.

State vs. Dawson, 16 Ind. 40; Aspinwall vs. Daviess County Com'rs, 22 How. 364.

In Smith vs. Silver Val. Min. Co. (Md.) 20 Atlantic 1032, Justice Miller said:—

“The mere grant of a charter, where it does not appear upon the face of the incorporating act, or otherwise, that the named corporators applied for it does not create the corporate body. Something must be done. There must be at least an acceptance of the grant by a majority of the corporators before corporate life and existence can begin.”

It is also the rule in the formation of corporations that the offer of a charter by a State must be accepted according to its terms. This is the general rule as to all contracts. It

can not be accepted conditionally or on terms differing upon the offer, nor can it be rejected in part and accepted in part unless this is allowed by the act.

Lyons vs. Railroad Co., 32 Md. 18, 29.

General statutes authorizing the formation of corporations by any person who will comply with their terms are general offers and may be accepted by any one or by any number of persons complying with their specific provisions.

Fire Department of New York vs. Kip, 10 Wend. N. Y. 266.

The time in which the offer to incorporate must be accepted, if it is limited by an act, must be complied with, else no charter could be created. However, if the act is an open act, general in its terms and continuing, all that is essential is to comply with it, and a corporation can be created, and unless the acceptance of the charter is made one of the ingredients of the incorporating act and a method provided, it will generally be sufficient acceptance if it can be in any way shown that the incorporators intended to accept the offer and incorporate the corporation.

Demarest vs. Flack, 128 N. Y. 205; 28 N. E. 645; State vs. Montgomery Light Co., 102 Ala. 594; 15 South 347; Jackson vs. Walsh, 75 Md. 304; 23 Atl. 778; St. Joseph & I. R. Co. vs. Shambaugh, 106 Mo. 557; 17 S. W. 581; Com. vs. Cullen, 13 Pa. St. 133; Russell vs. McLellan, 14 Pick (Mass.) 63; Society of Middlesex Husbandmen & Manufacturers vs. Davis, 3 Metc. (Mass.) 133; McKay vs. Beard, 20 S. C. 156.

Signing the articles of association, and complying with all the other requirements of a general law (conditions precedent) authorizing the formation of corporations, is clearly sufficient evidence of acceptance.

Glymont Imp. & Exc. Co. vs. Toler, 80 Md. 278; 30 Atl. 51; Benbow vs. Cook, 115 N. C. 324; 20 S. E. 453.

The acceptance of the charter upon the showing of such acts is presumed.

Bank of U. S. vs. Danridge, 12 Wheat 64, 70.

The rules above stated apply with equal force to amendments of Articles of Incorporations.

Eastern R. Co. vs. Boston & M. R. Co., 111 Mass. 125;
Eidman vs. Bowman, 58 Ill. 444; Chicago City Ry. Co.
vs. Allerton, 18 Wall 233.

CHAPTER IX.

EVERY SHARE HAS A VOTE.

§ 114. One Vote at Common Law.

At common law, in both public and private corporations, one vote to an individual, irrespective of his pecuniary interest in the corporation, was all that was allowed.

Taylor vs. Griswold, 14 N. J. L. 222; Re Horbury, etc. Co., L. R. 11 Ch. D. 109; Commonwealth vs. Nickerson, 10 Phila. (Pa.) 55; Harvard Law Rev., Nov. 1888, p. 156; Commonwealth vs. Detwiller, 131 Pa. St. 614.

§ 115. Public Corporation Still One Vote.

"Of course, in a public corporation, the rule still is that only one vote is allowed to a voter."

§ 116. Each Share Has a Vote.

It is no longer the rule that an individual votes according to his individuality, but votes according to his interest as represented by the number of shares of stock he holds in the private corporation. Where the statutes are silent upon the subject, a by-law may give the right.

Commonwealth vs. Detwiller, 131 Pa. St. 614; Proctor, etc. Co. vs. Finley, 33 S. W. Rep. 188 (Ky.).

Generally at the present time statutes or the charter prescribe that each share of stock shall be entitled to one vote, and such provisions apply with equal force to all elections or questions that come before the stockholders' meetings.

Hays vs. Commonwealth, 82 Pa. St. 518; Fredericks vs. Pennsylvania Canal Co., 109 Pa. St. 50; Re Rochester, etc. Co., 40 Hun. 172.

Such is believed to be the universal custom as well as the law upon the subject, and where an election by a majority of stockholders is called, it means a majority in interest, that is to say, a majority of the stock held by the individuals.

Weinburgh vs. Union, etc. Co., 37 Atl. Rep. 1026.

CHAPTER X.

MAJORITY RULE.

§ 117. **Parliamentary and Civil Law Alike Majority Rule.**

Corporations being fashioned after the government, which is a body politic and corporate, as are also the sovereign States, etc., as well as all deliberate assemblies, and like them have a charter, which is analogous to their constitutions, being their grants of respective powers and by-laws, which is analogous to the statutes of the government and States, etc., and, like them, move by and through agents only, it follows that some form of government must be adopted, and it follows that to adopt the same form of movement as is used and in force by these deliberative assemblies would be the most natural and proper. Hence, it is the universal practice of all corporations to operate under the usual form of parliamentary law. One of the rules of parliamentary law, unless otherwise stated in the by-laws, is that a majority rules. The majority rule means "a majority of votes cast, ignoring blanks, which should never be counted."

Robert's Rules of Order, p. 116, Note.

This rule applies with equal force, from a legal standpoint, to all corporations. The majority have the right to bind the minority by a vote duly taken upon any matter within the radius of the charter power or authority.

Durfee vs. Railroad Co., 5 Allen (Mass.) 230, 242; 1 Cumming, Cas. Priv. Corp. 773; Dudley vs. Kentucky High School, 9 Bush (Ky.) 578; 1 Cumming, Cas. Priv. Corp. 767.

Within the State the majority rule obtains in stockholders' meetings as well as directors, and within their scope the minority can not complain of their action. unless fraud is committed.

Durfee vs. Old Colony, etc. R. R., 87 Mass. 230; Cov-

ington vs. Covington, etc. Bridge Co., 10 Bush (Ky.) 69, 70; East Tennessee, etc. R. R. vs. Gammon, 5 Sneed (Tenn.) 567; Faulds vs. Yates, 57 Ill. 416; Leo vs. Union Pacific R. R., 19 Fed. Rep. 283 S. C.; 17 Fed. Rep. 273; Barnes vs. Brown, 80 N. Y. 527; Gifford vs. New Jersey R. R., 10 N. J. Eq. 171; Dudley vs. Kentucky High School, 9 Bush (Ky.) 576.

See also *Livingston vs. Lynch*, 4 Johns, Ch. 573, in which Chancellor Kent clearly states that the right of the majority to rule is one of the chief differences between a corporation and a partnership. The majority rule at common law.

Commonwealth vs. Nickerson, 10 Phila. (Pa.) 55; *New Orleans, etc. R. R. vs. Harris*, 27 Miss. 517, 537.

A majority of the stockholders control the policy of the corporation and regulate and govern the lawful exercise of its franchise and business, even though the management may not seem to be wise. The majority rule.

Wheeler vs. Pullman Iron, etc. Co., 143 Ill. 197.

Where a statute requires a three-fourths vote in value for a reorganization of a company, the stock not voted is not counted to make up three-fourths, even though the trustees who represent the stock refuse to assent or dissent.

Re Neath, etc. Ry., 1 Ch. 349.

Where stockholders in an apartment-house corporation are entitled to rent apartments at a rental to be fixed by a majority vote of the stockholders, an increased rental so voted is legal. The by-laws providing for such a vote override a general statement in a prospectus to the contrary, the stockholders knowing of the by-law.

Compton vs. Chelsea, 128 N. Y. 537; *Meeker vs. Winthrop Iron Co.*, 17 Fed. Rep. 48, S. C. sub. nom.; *Winthrop Iron Co. vs. Meeker*, 109 U. S. 180; but see *MacDougall vs. Gardiner*, L. R., 1 Ch. D. 13.

Those of the stockholders who attend the meeting constitute a quorum, although they are a minority.

Morrill vs. Little Falls Mfg. Co., 53 Minn. 371; *Granger vs. Grubb*, 7 Phila. 350.

Criag vs. First, etc. Church, 88 Pa. St. 42, where the principle is elucidated that this is the rule for a meeting composed of an indefinite number of persons, like stockholders, but that where a definite number is involved, as in a board of directors, then a majority must be present.

Brown vs. Pacific Mail, etc., 5 Blatchf. 525; S. C., 4 Fed. Cas. 420; Field vs. Field, 9 Wend. 394; Gowens Appeal, 10 W. N. Cas. 85 (Pa.); Madison Ave. Bapt. Church vs. Oliver St. Bapt. Church, 5 Robt. (N. Y.) 649; Everett vs. Smith, 32 Minn. 53.

It has been held that one person can not constitute a quorum; that at least two members are necessary to make a corporate meeting.

Sharpe vs. Dawes, 46 L. J. (Q. B.) 104.

In this case one stockholder "met," did all necessary business, and then voted himself a vote of thanks.

In re Sanitary Carbon Co., 12 W. N., p. 223, where one stockholder, having also proxies of the remaining three stockholders held a meeting, "voted himself into the chair, proposed a resolution to wind up voluntarily, declared the resolution passed, and appointed a liquidator." The court reluctantly followed the preceding case and declared the "meeting" invalid.

Without the State, stockholders can, when they all consent, perform as valid acts as if they were within the State.

Why can not a majority of stockholders transact any business of the corporation within their province, without the State, with equal force as if they were within the State, provided they do no fraud? Who will be injured? Where there is no wrong or injury, who can complain?

It becomes a question of distance, inconvenience, and minority rule, rather than right or majority rule, to say the majority stockholders can not transact the business of the corporation in a foreign jurisdiction as well as within the State. If the minority have notice, and do not appear in a meeting out of the state of formation therein, they control.

CHAPTER XI.

QUORUM.

§ 118. Majority Who Attend.

At common law, each stockholder had one vote, irrespective of the number of shares owned by him.

Taylor vs. Griswold, 14 N. J. L. 222; Re Horbury, etc. Co., L. R. 11 Ch. D. 109; Commonwealth vs. Nickerson, 10 Phila. (Pa.) 55; Commonwealth vs. Detwiller, 131 Pa. St. 614.

It is generally provided by statute, charter, or by-law that each share of stock have one vote. The rule of the common law does not obtain in jurisdiction where statutory provisions exist.

The majority of those who do attend a duly and regularly called stockholders' meeting can transact the business of that meeting regardless of whether the number present are a majority of all the stockholders or not; those who do attend will constitute a quorum.

Morril vs. Little Falls Mfg. Co., 53 Minn. 371; Granger vs. Grubb, 7 Phila. 350; Craig vs. First, etc. Church, 88 Pa. St. 42.

§ 119. Majority in Interest.

Nevertheless, where by statute the quorum is to be a majority of the stockholders, this means a majority in interest.

Weinburg vs. Union, etc. Co., 37 Atl. Rep. 1026 (N. J.).

There are two exceptions to the above majority rule; to wit: First, the majority can not transact *ultra vires* acts; second, nor accept an amendment of the charter made by the Legislature. In either case, the minority or any stockholder may enjoin it or set it aside.

McFadden vs. Leeka, 48 Ohio St. 513; Winter vs. Muscogee R. R., 11 Ga. 438; Middlesex Turnp. Corp. vs. Locke, 8 Mass. 268; Middlesex Turnp. Corp. vs. Swan,

10 Mass. 384; *Hester vs. Memphis, etc. R. R.*, 32 Miss. 378; *Witter vs. Mississippi, etc. R. R.*, 20 Ark. 463; *Champion vs. Memphis, etc. R. R.* 35 Miss. 692; *Simpson vs. Denison*, 10 Hare 54; *Manheim, etc. Co. vs. Arndt*, 31 Pa. St. 317; *Thompson vs. Guion*, 5 Jones Eq. (N. C.) 113; *Hartford, etc. R. R. vs. Croswell*, 5 Hill 383; *Marietta, etc. R. R. vs. Elliott*, 10 Ohio St. 57; *First Nat. Bank vs. Charlotte*, 84 N. C. 433; *Memphis Branch R. R. vs. Sullivan*, 57 Ga. 240; *Indiana, etc. Turnp. Co. vs. Phillips*, 2 Pen. & W. (Pa.) 184; *Fulton County vs. Mississippi, etc. R. R.*, 21 Ill. 338; *Carlye vs. Terre Haute, etc. R. R.*, 6 Ind. 316; *Pittsburg, etc. R. R. vs. Gazzam*, 32 Pa. St. 340; *Union Locks & Canal vs. Towne*, 1 N. H. 44; *Ashton vs. Burbank*, 2 Dill. 435; *S. C. 2 Fed. Cas.* 26; *Stevens vs. Rutland, etc. R. R.*, 29 Vt. 545; *Noeson vs. Port Washington*, 37 Wis. 168; *Mahan vs. Wood*, 44 Cal. 462; *Illinois, etc. R. R. vs. Cook*, 29 Ill. 237; *McGray vs. Junction R. R.*, 9 Ind. 358; *Shelbyville, etc. Turnp. Co. vs. Barnes*, 42 Ind. 498; *Booe vs. Junction R. R.*, 10 Ind. 93; *New Orleans, etc. R. R. vs. Harris*, 27 Miss. 517; *Clearwater vs. Meredith*, 1 Wall. 25; *Knoxville vs. Knoxville, etc. R. R.*, 22 Fed. Rep. 758; *Kean vs. Johnson*, 9 N. J. Eq. 401; *Black vs. Delaware, etc. Canal Co.*, 24 N. J. Eq. 455; *Cf. Lauman vs. Lebanon Valley R. R.*, 30 Pa. St. 42; *Mowrey vs. Indianapolis, etc. R. R.*, 4 Biss. 78 W. C.; 17 Fed. Cas. 930; *Fry vs. Lexington, etc. R. R.*, 2 Metc. (Ky.) 314; *Delaware, etc. R. R., Irick*, 23 N. J. L. 321; *Taylor vs. Supervisor*, 86 Va. 506; *Pearce vs. Madison, etc. R. R.*, 21 How. 441; *Tuttle vs. Michigan Air Line R. R.*, 35 Mich. 247; *New Jersey Mid. Ry. vs. Strait*, 35 N. J. L. 322.

The stockholder may say: "I have agreed to become interested in a railroad company, and have contracted in view of the profits to be expected and the perils and losses incident to that description of business; but I have not agreed that those to be entrusted with the capital I contribute shall have power to use it in a business of a different character, and attended with hazards of a different description."

Maruetta, etc. R. R. vs. Elliott, 10 Ohio St. 57; *Shaw vs. Campbell, etc. Co.*, 15 S. W. Rep. 245 (Ky.); *Mercantile Statement Co. vs. Kneal*, 51 Minn. 263; *Snook*

vs. Georgia Imp. Co., 83 Ga. 61; Hill vs. Glasgow R. R. 41 Rep. Fed. 610; New Orleans, etc. R. R. vs. Harris, 27 Miss. 517; Re Opinion of the Judges, 28 S. E. Rep. 18; Tucker vs. Russell, 82 Fed. Rep. 263; Sheriff vs. Lowndes, 16 Md. 357; Louisville vs. University of Louisville, 15 B. Mon. (Ky.) 642; Norris vs. Abingdon Academy, 7 Gill & J. (Md.) 7. 8; Harvard L. Rev. 396; Loewenthal vs. Rubber, etc. Co., 52 N. J. Eq. 440; Printing House vs. Trustees, 104 U. S. 711; Hoey vs. Henderson, 32 La. Ann. 1069; Re St. Mary's Church, 7 Serg. & R. (Pa.), P. 517.

CHAPTER XII.

CUMULATIVE VOTING.

§ 120. Statutory Invention.

The invention of cumulative voting is a statutory invention intended to give the minority an opportunity to reach a representation on the board of directors or in any committee where their rights should be represented. It is intended also to prevent the majority from capturing the entire situation and practically keep the workings of the corporation secluded from knowledge of the minority. The following States have provided for cumulative voting, either by their constitutions or statutes; to wit: California, Pennsylvania, Illinois, West Virginia, Nebraska, Michigan, Missouri, Idaho, Kansas, Kentucky, Montana, North Dakota, South Dakota, Mississippi.

§121. Rule Cumulative Voting.

In *Wright vs. Central Cal. etc. Co.*, 67 Cal. 532, the court said respecting the clause conferring the right of cumulative voting, that this provision conferred "upon the individual stockholder, entitled to vote at an election, the right to cast all the votes which his stock represents, multiplied by the number of directors to be elected, for a single candidate should he think proper to do so, . . . or by distributing them, upon the same principle, among as many candidates for directors as he shall think fit."

§ 122. Cumulative Voting Trick.

Cook on Corporations, vol. 2, p. 1138, sec. 609a, says of cumulative voting:—

"If there are six directors to be elected, a stockholder who owns one hundred shares may poll six hundred votes; and

these he may give entirely to one or more of the six candidates as he may see fit. In this way, any minority of the stockholders exceeding one-sixth part, acting together, may elect one member of a board of directors, and thus secure a representation in that body. A larger minority might secure the election of two members of such a board, the possibility of increasing the minority representation increasing as the minority increases, without it ever becoming possible for a minority, upon a full vote, to secure more than its equitable proportion of the representation."

The genius of circumvention is generally equal to the genius of invention, and, while cumulative voting is possibly a protection to a certain degree to the minority, it is also susceptible of being used as the means of tricks and traps as is shown by Mr. Cook in his work on corporations.

Thus, suppose there are 1,000 shares and ten directors to be elected, and one person holds 600 shares. Clearly he should be able to elect a majority of the ten directors. Suppose he votes his 600 votes for six of his friends (A, B, C, D, E, and F) and for four of the minority (G, H, I, and J); and suppose at the same time the 400 shares of the minority are cumulated on three other parties (K, L, and M), with ten votes for the four directors mentioned above (G, H, I, and J). The result will then be as follows:—

A, B, C, D, E, and F have....	600 votes each.
G, H, I, and J have.....	610 votes each.
K, L, and M have.....	1,320 votes each.

In other words, the majority of votes do not elect. Again, suppose the holder of the 600 shares does not vote for any minority candidate at all, but casts 600 votes for each of his six candidates, A, B, C, D, E, and F. Even then he may lose the election. The minority 400 may cumulate their 4,000 votes on six candidates, and give each of the six 666 2-3 votes. Under the cumulative system, the majority, in order to be safe, must not only abandon the idea of electing the whole board, but must cumulate their votes on such a proportion of the board as their stock bears to the whole stock, and must

not cast complimentary votes for representatives of the minority.

Cook on Corp., vol. 2, p. 1141; sec. 609a, note 1 and 2.

Stockholders are not compelled to vote on the cumulative plan unless they see fit, even though the statute provides for this character of voting.

Schmidt vs. Mitchell, 41 S. W. Rep. 929 (Ky.).

CHAPTER XIII.

PROXIES.

§ 123. Proxies None at Common Law.

Voting by proxy is a very common form of carrying on corporations. Where there is perfect harmony in the management of a concern, it is very often the case the stockholders, being satisfied with the management, give their proxies to certain members interested with them in the company, and are possibly hardly ever at any of the meetings of the corporation. Proxy means a person who is substituted or deputed by another to represent him.

Black's Law Dictionary, p. 960.

A vote by proxy is where one person authorizes another by a power of attorney or otherwise to vote his stock in the corporation. No such invention existed at common law as voting by proxy.

Taylor vs. Griswold, 14 N. J. L. 223; Philips vs. Wickham, 1 Paige 590; Brown vs. Commonwealth, 3 Grant (Pa.) 209; Craig vs. First Presbyterian Church, 88 Pa. St. 42; Commonwealth vs. Brighthurst, 103 Pa. St. 134; People vs. Twaddell, 18 Hun. 427, 430; Re Dean and Chapter of Fernes, Davies 116, 129; Attorney-General vs. Scott, 1 Vesey 413; Harben vs. Phillips, L. R. 23 Ch. D. 14, 22, 36.

At common law all the votes must be given in person.

Taylor vs. Griswold, 14 N. J. Law, 222; 27 Am. Dec. 33; Com. vs. Brighthurst, 103 Pa. St. 134; 49 Am. Rep. 119; Phillips vs. Wickham, 1 Paige, Ch. (N. Y.) 590; People vs. Twaddell, 18 Hun. (N. Y.) 427.

§ 124. Proxy By-law Charter or Statutory Matter.

By the weight of authority, by-laws may be enacted by a corporation giving the right to vote by proxy.

Detwiller vs. Com., 131 Pa. St. 614; 18 Atl. 990; State

vs. Tudor, 5 Day (Conn.) 329; 5 Am. Dec. 162; People vs. Crossley, 69 Ill. 195.

It follows that before an individual can vote by proxy that he must be empowered to do so by reason of a statute, a charter, or by-laws. For illustration, it was provided in the general incorporation acts of New York that each stockholder, "being a citizen of the United States," had the right to vote by proxy, under which it was held not to give an alien stockholder the right to vote by proxy.

In re Barker, 6 Wend. (N. Y.) 509.

A proxy can be given only by him who owns the stock. As was said:—

"The right of voting stock is inseparable from the right of ownership. The one follows as a sequence from the other, and the right to vote can not be separated from the ownership without the consent of the legal power."

Tunis vs. Railroad Co., 149 Pa. St. 70; 24 Atl. 88.

The stockholders of a corporation can not agree not to sell or assign their shares or give a power of attorney to vote the same without the consent of all the parties to the agreement. Such an agreement is void on three grounds: first, because the agreement not to sell or assign is in restraint of trade, and therefore against public policy; second, because the agreement not to vote by proxy was pernicious and contrary to public policy; third, because such an agreement was a mere *nudum pactum* and void.

Bostwick vs. Chapman (Shepaug Voting Trust Cases), 60 Conn. 553; 24 Atl. 32.

The court, speaking by Judge Robinson, further said:—

"This I conceive to be against the policy of the law, whether the power so to vote be for five years or for all time. It is the policy of our law that ownership of stock shall control the property and the management of the corporation, and this can not be accomplished, and this good policy is defeated if stockholders are permitted to surrender all their discretion and will in the important matter of voting, and suffer themselves to be mere passive instruments in the hands

of some agent, who has no interest in the stock, equitable or legal, and no interest in the general prosperity of the corporation. And this is not entirely for the protection of the stockholder himself, but to compel a compliance with the duty which each stockholder owes to his fellow stockholder to so use such power and means as the law and his ownership of stock give him that the general interest of stockholders shall be protected, and the general welfare of the corporation sustained, and its business conducted by its agents, managers, and officers, so far as may be, upon prudent and honest business principles, and with just as little temptation to and opportunity for fraud, and the seeking of individual gains at the sacrifice of the general welfare, as is possible. This, I take it, is the duty of one stockholder in a corporation owes to his fellow stockholder, and he can not be allowed to disburden himself of it in this way. He may shirk it, perhaps, by refusing to attend stockholders' meetings, or by declining to vote when called upon, but the law will not allow him to strip himself of the power to perform his duty. To this extent, at least, a stockholder stands in a fiduciary relation to his fellow stockholders."

Griffith vs. Jewett, 15 Wkly. Law Bul. 419; Moses vs. Scott, 84 Ala. 608; 4 South. 742.

§ 125. Proxy Revocable.

The question whether a power of attorney or proxy to vote is revocable or not often arises, and the rule is that even though the power of attorney or proxy may be in terms irrevocable, still it may be revoked at any time before the vote, if, however, it is not coupled with an interest.

Woodruff vs. Railroad Co., 30 Fed. 91.

It has been held that such a contract as an irrevocable power of attorney to vote stock was not contrary to public policy, but merely revocable.

Brown vs. Steamship Co., 5 Blatchf. 525; Fed. Cas. No. 2025.

But in *Bostwick vs. Chapman*, *supra*, it was held contrary to public policy to allow a stockholder to strip himself of the power to vote upon his shares or to determine how they should be voted, by giving an irrevocable proxy to one who has no

beneficial interest or title in or to the stock or in the affairs of the corporation. A proxy or power of attorney must be sufficient upon its face to show that it is intended by the giver to cast the right of voting to the one who receives it and that there is no fraud.

In re St. Lawrence Steamboat Co., 44 N. J. Law 529.

A proxy given for an election merely does not enable the proxy to vote to dissolve the corporation or sell the entire corporate business or property or vote upon other important business, unless the proxy specifically so designates, and when a proxy designates the purpose for which it is given, it can not be used for any other purpose.

Abbott vs. American Hard Rubber Co., 33 Barb. 578, 584; Cumberland and Coal Co. vs. Sherman, 30 Barb. 553, 577; Re Wheeler, 2 Abb. Pr. (N. S.) 361; Marie vs. Garrison, 13 Abb. N. Cas. 210, 235; Brown vs. Byers, 16 M. & W. 252; Re Haven, etc. Co., L. R. 20 Ch. D. 151; Regina vs. Government, etc. Co., L. R. 3 Q. B. D. 442; Decatur Bldg. etc. Co. vs. Neal, 97 Ala. 717; Howard vs. Hull, 5 Ry. & Corp. L. J. 255 (Eng.).

To illustrate: A proxy for an election does not extend to an election four months later.

Howard vs. Hull, 5 Ry. & Corp. L. J. 255 (Eng.).

A proxy to vote at a corporate meeting is not authorized to vote to discharge a mortgage which secures the stockholder who gave the proxy, as a creditor of the corporation.

Moore vs. Ensley, 20 S. Rep. 744 (Ala.).

A general proxy giving the power to vote as fully as a stockholder could if he were personally present, gives the right to vote on the question of adjournment and of opening the ballots.

Forsyth vs. Brown, 2 Pa. Dist. 765.

A proxy has a right to vote on a *viva voce* vote or show of hands. However, a person may hold the proxies of several persons, and yet when the vote is taken by show of hands, he has only one vote.

Ernest vs. Loma, etc. Mines, 75 L. T. Rep. 317.

In England proxies deposited abroad have been allowed to vote by telegram.

Commonwealth vs. Patterson, 158 Pa. St. 476.

In New York the sale of proxies is forbidden. There is no restraint in many of the States against the sale of proxies, and this is one of the means by which pivotal stockholders oftentimes acquire funds from ambitious persons who desire to hold control of the corporation.

Hafer vs. New York, etc. R. R., 14 Week. L. Bul. 68.

However, it is a fraud for the directors of a corporation to use the funds of the corporation to purchase proxies for themselves or their nominees, and upon such a case about to happen, such action may be enjoined, and if it has happened, the funds may be recovered to the corporation.

Studdert vs. Grosvenor, L. R. 33 Ch. D. 528.

The giving of proxies may be directed by a will, and if the parties to whom the proxies are given fail or refuse to execute the directions of the will, a court of equity will compel them to follow its terms.

Lafferty's Estate, 154 Pa. St. 430; Tunis vs. Hestonville, etc. R. R., 149 Pa. St. 70.

All proxies should be in writing, and need not be in any particular form, and to this end corporate officers may insist upon such evidence and its genuineness before allowing it to be voted.

Re St. Lawrence Steamboat Co., 44 N. J. L. 529; Re Indian, etc. Co., L. R. 26 Ch. D. 70.

No particular form of words is necessary to constitute a proxy.

Smith vs. San Francisco, etc. Ry., 47 Pac. Rep. 582 (Cal.); see the form of proxy in Marie vs. Garrison, 13 Abb. N. Cas. 210, 234.

Proxies need not be acknowledged, proved, or witnessed.

Re Cecil, 36 How. Pr. 477.

A proxy need not state the day upon which the election is to be held.

Re Townsend, 18 N. Y. Supp. 905.

A proxy is good although the date when it is given is left blank and has not been filled in.

Re St. Lawrence Steamboat Co., 44 N. J. L. 529.

Where one gave a proxy to vote at an annual election, it was held *prima facie* evidence that he was a stockholder just before such election.

Harger vs. McCullough, 2 Denio 119, 122.

A proxy which has been exercised and voted upon for many years without renewal was sustained in Monsseaux vs. Urquhart, 19 La. Ann. 482.

Although a notice of a corporate meeting, and proxies given for a corporate meeting add to the name of the corporation the place where it is located, this is immaterial.

Langan vs. Franklyn, 20 N. Y. Supp. 404; Re St. Lawrence Steamboat Co., 44 N. J. L. 529.

But the inspectors have no right to refuse a vote by proxy or to assume a judicial power to try its genuineness, if it is apparently executed by the stockholder and is regular in form.

Re Cecil, 36 How. Pr. 477.

Neither the stockholder nor his proxy can be compelled by a by-law to take an oath that the former is the owner of the stock.

People vs. Tibbitts, 2 Cow. 358; People vs. Kip. 4 Cow. 382.

The by-laws may require the proxies to be witnessed.

Harben vs. Phillips, L. R. 23 Ch. D. 14.

Proxies may be made in blank and may be filled up with the party's name to whom the proxy is given.

Ex parte Duce, L. R. 13 Ch. D. 429; ex parte Lancaster, L. R. 5 Ch. D. 911; Qudere in re White vs. New York, etc. Soc., 45 Hun. 580.

As to whether blank proxy may be filled by an agent, see qudere in re White vs. New York, etc. Soc., 45 Hun. 580.

Parol evidence is admissible to prove the contents of a proxy that has been destroyed.

Haywood & Pittsburgh P. R. Co. vs. Bryan, 6 Jones L. (N. C.) 82.

A proxy may fill in the day and hour of meeting if those are left in blank.

Ernest vs. Loma, etc. Mines, 75 L. T. Rep. 317.

Any attempt by which stockholders of a corporation seek through the power of an irrevocable proxy to gain and keep the control of the corporation is void, as the proxy is always revocable, and all proxies of that kind are held to be pernicious contracts and unlawful.

Schmidt vs. Mitchell, 41 S. W. Rep. 929 (Ky.); Woodruff vs. Dubuque, etc. R. R., 30 Fed. Rep. 91; Griffith vs. Jewett, 15 Week. L. Bull. 419; Vanderbilt vs. Bennett, 2 Ry. & Corp. L. J. 409 (Pa.); Brown vs. Pacific Mail Steamship Co., 5 Blatchf. 525; S. C., 4 Fed. Cas. 420; Reed vs. Bank of Newburgh, 6 Paige 337; People vs. Nash, 11 N. Y. 310, 315; Fisher vs. Bush, 35 Hun. 641; Re Germicide Co., 65 Hun. 606; Cone vs. Russell, 48 N. J. Eq. 208.

CHAPTER XIV.

WHO HAS A RIGHT TO VOTE STOCK.

§ 126. Registered Owner Right to Vote.

The question who has the right to vote upon the stock of a corporation always arises when there is an important meeting to be held, as the line will be very tightly drawn by the interested stockholders seeking to control the corporation, and the information necessary to decide the proposition of who has a right to vote generally is that the registered owner of the stock is the one entitled to vote that stock.

“The general rule is that, as between the corporation and the person offering to vote, the right follows the legal title, of which the certificate and stock-books are the *prima facie* evidence. By-laws may establish a different rule, and there may be special circumstances to change the equities as to individuals or even as to the corporation.”

Commonwealth vs. Dalzell, 152 Pa. St. 217.

Where the charter or by-laws provide that the stock be transferable only on the books of the company, the name of the person in whom the stock stands on the books of the company at the time the vote is taken is the proper person to cast the ballot on that stock.

Morrill vs. Little Falls Mfg. Co., 53 Minn. 371 ; ex parte Willcocks, 7 Cow. 402.

In State vs. Ferris, 42 Conn. 560, 568, the court said:—

“The party who appears to be the owner by the books of the corporation has the right to be treated, as a stockholder and to vote on whatever stock stands in his name.”

In Hoppin vs. Buffum, 9 R. I. 513, the court said:—

“In case of a dispute as to the right to vote, the books of the corporation are the *prima facie* evidence ; at any rate, the corporation can not be required to decide a disputed right.
. . . Upon any other rule, it could never be known who

were entitled to vote until the courts had decided the dispute."

Allen vs. Hill, 16 Cal. 113; Re St. Lawrence Steamboat Co., 44 N. J. L. 529.

The president of a corporation has no power to decide who has a right to vote. The transfer book is the proper authority.

State vs. Cronan, 49 Pac. Rep. 41 (Nev.).

It matters not whether the party standing on the books as the owner is the nominal or actual holder. He has a right to vote the stock.

State vs. Leete, 16 Nev. 242; Smith vs. San Francisco, etc. Ry., 47 Pac. Rep. 582 (Cal.).

The right to vote stock is not extended to a corporation who holds its own stock nor to trustees for the benefit of such corporation.

Ex parte Holmes, 5 Cow. (N. Y.) 426; Vail vs. Hamilton, 85 N. Y. 453; American Railway-Frog Co. vs. Haven, 101 Mass. 398; State vs. Smith, 48 Vt. 266.

Unless it is otherwise provided by statute or by a contract, a pledgee of stock is entitled to vote upon it until the title of the pledgee of the stock is perfected or destroyed.

McDaniels vs. Manufacturing Co., 22 Vt. 274; President, etc. of Merchants Bank vs. Cook, 4 Pick. 405 (Mass.); In re Barker, 6 Wend. (N. Y.) 509; Ex parte Willcocks, 7 Cow. (N. Y.) 402; Hoppin vs. Buffum, 9 R. I. 513.

However, a pledgee may have his suit in equity to compel a transfer to him or oblige the pledgor to give him a proxy to vote such stock.

Vowell vs. Thompson, 3 Cranch, C. C. 428; Fed. Cas. No. 17,023; Hoppin vs. Buffum, 9 R. I. 513.

The court of equity will not interfere after the result of an election has been obtained at the instance of the pledgor. He is too late, and so long as the stock stands on the books of the company in the name of the pledgee without any reservation on the part of the pledgor, the pledgee will be entitled to vote the stock.

Hoppin vs. Buffum, 9 R. I. 513; In re Barker, 6 Wend.

(N. Y.) 509; *Com vs. Dalzell*, 152 Pa. St. 217; 25 Atl. 535; *Wilson vs. Proprietors Central Bridge*, 9 R. I. 590.

There are some exceptions to the rule that the stock-book is conclusive evidence of those who have the right to vote. For instance, any case where stock belongs to the corporation, the inspectors of election may, upon the ascertainment of that fact, reject the votes, and they may inquire into and allow the administrator of the deceased person to vote.

Schmidt vs. Mitchell, 41 S. W. Rep. 929 (Ky.); *Market Street Ry. vs. Hellman*, 109 Cal. 571; *Re Cape May*, etc. Co., 16 Atl. Rep. 191 (N. J.); *Re North Shore*, etc. Ferry Co., 63 Barb. 556; *Wolfe vs. Underwood*, 97 Ala. 375; *Scholarie Valley R. R. Case*, 12 Abb. Pr. (N. S.) 394; *Ex parte Holmes*, 5 Cow. 426; *McNeely vs. Woodruff*, 13 N. J. L. 352; *American Ry. Frog Co. vs. Haven*, 101 Mass. 398; *Commonwealth vs. Boston*, etc. R. R., 142 Mass. 146; *State vs. Smith*, 48 Vt. 266; *Monsseaux vs. Urquhart*, 19 La. Ann. 482; *U. S. vs. Columbian Ins. Co.*, 2 Cranch C. C. 266; *New England*, etc. Ins. Co. vs. Phillips, 141 Mass. 535; *Brewster vs. Hartley*, 37 Cal. 15; *Farwell vs. Houghton*, etc. Works, 8 Fed. Rep. 66; *Vail vs. Hamilton*, 85 N. Y. 453; *Ex parte Desdoity*, 1 Wend. 98; *Market Street Ry. vs. Hellman*, 109 Cal. 571.

The court of equity has the power to appoint a receiver to hold an election where stock belongs to parties who have been defrauded, and the court may go further and direct the receiver how to vote such stock.

King vs. Barnes, 51 Hun. 550; *aff'd* 113 N. Y. 655; *Waneker vs. Hitchcock*, 38 Fed. Rep. 383; *People vs. Albany*, etc. R. R., 55 Barb. 344, 371; *American Inv. Co. vs. Yost*, 25 Abb. N. Cas. 274.

It may be stated as a general rule that where there is any trick, cheat, or fraud in the voting of stock, or pernicious advantage taken, that the court of equity can set aside any election or any action taken by such stockholders.

Davidson vs. Grange, 4 Grant's Ch. Rep. (Can.) 377.

"This court unquestionably has the power to prevent their election by an injunction operating upon the commissioners, restraining them from acting as inspectors of the election."

Walker vs. Devereaux, 4 Paige 229, 247.

Where a fraudulent or illegal election has been held, it may be investigated and remedied by a writ of *quo warranto* and mandamus. The natural and proper remedy is by *quo warranto* to test the title to office. Such remedy does not go as of course, that is to say, it is not a legal right absolute, but rests in the sound discretion of the court upon proper information before chancellor.

State vs. Lehre, 7 Rich. L. (S. C.) 234; Whitcomb vs. Lockerby, 59 N. W. Rep. 495 (Minn.); State vs. Cronan, 49 Pac. Rep. 41 (Nev.).

When the title *de jure* has been adjudicated, mandamus is the proper remedy.

Leeds vs. Atlantic City, 52 N. J. L. 332.

Mandamus is the proper remedy to compel illegally elected directors to surrender the books to the legally elected directors.

American Ry. Frog Co. vs. Haven, 101 Mass. 398.

Sometimes the remedy by mandamus is specifically allowed by statute, such as the law in Nevada.

State vs. Cronan, 49 Pac. Rep. 41 (Nev.).

If, however, the election has taken place, an injunction will not lie; otherwise, it will.

Cook on Corporation, vol. 2, p. 1159, sec. 616, and authorities there cited.

CHAPTER XV.

ORGANIZATION OF CORPORATION SUGGESTIONS.

§ 127. To Form Corporation One Thing.

To form a corporation under general law is to comply with the "conditions precedent" required in the laws under which incorporation is sought, as was said by the Supreme Court of California:—

"Under our system of incorporation through general laws, a corporation *de jure* is an artificial body created by operation of law upon the execution, filing, and certification of certain written instruments by persons desirous of incorporating, and certain public officers in accordance with the provisions of such general laws.

"When these instruments are executed, filed, and certified as required, the corporation *co in stante* comes under legal existence.

"Its corporate life is then complete, without any further act or user; and it can be destroyed only by some subsequent act of forfeiture; the corporation is then regularly formed. It may be conceded that a substantial compliance is sufficient, but it is clear that a necessary prerequisite can not be omitted."

Martin vs. Deetz, 102 Cal. 55.

§ 128. Organization Definition.

To organize a corporation is quite a different thing to its formation. Organization is to systematize, to put into working order, to elect its officers, its board of directors, adopt its by-laws, its seal, its certificates, and to arrange in order for the normal exercise of its appropriate functions or exercise of its powers.

To organize a corporation "ordinarily signifies the choice and qualification of all necessary officers for the transaction of the business of the corporation."

Black's Law Dict., 856; 38 Conn. 66; Hana vs. International Petroleum Co., 23 Ohio St. 622; Compare Vt. Cent. R. R. Co. vs. Claves, 21 Vt. 30; Stoops vs. Greens-

burgh, etc. Plank Road Co., 10 Ind. 47; Bronwer vs. Appleby, 1 Sand. 158.

To descend more particularly to what it takes to organize a corporation before it can have a *de facto* existence, the Supreme Court of California said, where there are—

“no meetings of the members or trustees, no election of officers, no by-laws adopted, no certificate of shares or membership issued, no seal adopted or used, no record or minutes kept—in short no corporate acts of any character performed—does not form a *de facto* corporation or there is none to act.”

Wall vs. Mines, 130 Cal. 27; Martin vs. Deetz Supra.

§ 129. Organization Mere Matter of Corporate Business.

At the civil or Roman law charters did not have to emanate or have the sanction of the prince. After the incorporation was adopted as a plan or system of business by the English, the consent of the king was made a necessary part of it, as everything was supposed to come from the king. It was made the king's prerogative.

Sharswood's Blackstone “Commentaries,” vol. 1, p. 471.

Corporations did not depend on the statutes of England for their rights to do business, but on their immemorial customs and usages and the common law and their by-laws, which latter were their own statutes.

Sharswood's Blackstone “Commentaries,” vol. 1, p. 477.

At the common law the corporation upon its erection had inalienable rights incident and necessary to its existence which covered every conceivable transaction, bounded and co-extensive with the right of a natural person.

Sharswood's Blackstone “Commentaries,” vol. 1, pp. 475, 476.

This is necessarily so, as the corporation was originated for the very purpose of duplicating and retaining rights of persons and things and carrying them on with like force and effect perpetually, the same as a natural person.

Sharswood's Blackstone “Commentaries,” vol. 1, pp. 467, 468.

To have perpetual succession, to make contracts, to own property, to make by-laws, and to do every other thing necessary to carrying on the business of the corporations were alike incidents and powers necessary and inseparable to every private corporation, both at civil and common law.

It will be noted that all these inherent rights or powers, and more, are enumerated, extended, recognized, and granted by the laws of Arizona Territory.

The election of directors is an inherent right of every corporation.

Hurlbut vs. Marshall, 62 Wis. 590; 22 N. W. 852.

The election of directors followed as a matter of course the formation and adoption of by-laws, as the by-laws prescribe the duties of all the officers of the corporation, and the directors being only officers or agents of the corporation, it follows as a logical deduction that the election of officers should follow after the law defining the rights of such officers.

We have seen that the charter or Articles of Incorporation of a corporation is a legislative contract to be interpreted like any other contract.

A by-law is only a stockholder's contract with the corporation acting in the capacity of employing an agent for the corporation.

The by-laws are the statutes of the little republic or corporation, passed by the stockholders for its regulation and control. The power of the stockholder to pass by-laws for the corporation is analogous to the power of the Legislatures to pass laws for the State; the one is inherent or inalienable right while the other is the police power of the State. The Supreme Court of the United States, speaking of the police power of the State, said:—

“It is true that the Legislature which secures to all protection in their rights, and the equal use and enjoyment of their property, embraces an almost infinite variety of subjects. Whatever affects the peace, good order, morals, and health of the community comes within its scope; and every one must use and enjoy his property subject to the restrictions

which such legislation imposes. What is termed the 'police power' of the State, which, from the language often used respecting it, one would suppose to be an undefined and irresponsible element in government, can only interfere with the conduct of individuals in their intercourse with each other, and in the use of their property, so far as may be required to secure these objects."

94 U. S. 145.

The one is subservient to the constitution's laws and charter, while the other is subservient to the constitution only. As the constitution is the measure of the police power, to pass legislative enactments of the State, so is the charter or Articles of Incorporation the measure of the stockholders' power to pass by-laws for the regulation and control of the corporation in the business designated in the charter or Articles of Incorporation. As the republic is for the betterment of society at large, so the incorporation is for the betterment of the interests of the incorporators in the business incorporated.

Just precisely, then, the corporation by its stockholders has the inherent right to make its by-laws, *a fortiori*, have they the right to elect officers and agents to carry out those by-laws, both of which are mere business matters of the corporation to be attended to by the stockholders for the corporation, with neither of which has the States any concern or interest.

Some of the States require by statutes that the incorporation be organized within the State of its creation; this they have the undoubted power to do, yet such limitation on the corporation is an arbitrary usurpation of the inherent and time immemorial rights and customs of the private business of corporations that results in no benefit to the State, and interferes materially with the corporate affairs. Especially is this true as to all those living in one State desiring to incorporate in another. It is a serious embargo on incorporators, inflicting loss of time, loss of property, with no beneficial result.

The power to make by-laws may be delegated to the board

of directors by the stockholders or it may be provided in the charter.

Clark on Corporations, 455; Cahill vs. Insurance Co., 2 Doug. (Mich.) 124.

Majority of directors may make the by-laws in such case.
Cahill vs. Ins. Co. Supra.

The conclusion is reached beyond any question that under the civil law organization was a matter of business custom and usage of the corporation with which the Roman States had nothing to do nor made no effort to interfere with, and was effected wherever the convenience of the incorporators dictated.

That under the common law of England the rule was the same, and organization was left to the immemorial customs and usages of the corporation, as such system was adopted from the civil law, that the common law becoming a part of our system of jurisprudence, and likewise the corporation, the usages and customs of the corporation followed into our system of law for a republic not unlike the civil law, and the right to organize the corporation is a mere matter of business, under our law, of the corporation that may be done anywhere, the statute of the State does not inhibit.

§ 130. Organization Meetings Where Held.

It is the custom of corporations where the statute does inhibit the holding of meetings outside of the State, to hold their meetings for the transaction of their business outside of the State of their creation when they like; especially is this true where incorporators have sought incorporation in a State or Territory foreign to that of their domicile. It is the invariable practice of thousands of corporations to hold all of their meetings where they reside, or at home, or where they may designate in the charter or by-laws

The reason given in some of the old decisions of the States, why organization and other meetings could not be held without the State, was that the corporation had no legal existence outside of the State of its creation, and that it must

be organized within the atmosphere of the law of its creation, does not, in the absence of statute requiring such meeting within the State, appear to be of any substance or to have any weight. Why should the State be concerned about the business of a corporation whether it was ever organized or not, or whether it ever made a contract of any kind? Corporations act by and through natural persons, and in no other way. The corporation can do no act except through some natural person. Its business transactions necessarily depend not on the law of its creation, but on its stockholders and its other agent; wherever they are or go, there the corporation is in full force for the transaction of its business, it matters not of what kind or character it may be. Why should one piece of corporate business be valid without the State, and another of equal and no greater importance be invalid? The law goes no further than to erect it in conjunction with the incorporators; further than that the law does not go nor can it go. The balance of the functions or business must be carried out, if at all, by the agents of the corporation. The moment it is conceded that a corporation can, through its agents, migrate for business purposes to another State, it had as well be conceded that wherever an act of the corporation is dependent solely upon the corporate agent then and there that act may be done wherever it is for the best interests of the corporation to have it done, whether it be within or without the State of its creation. Any other rule would do violence to business and common sense.

Upon the question of meetings, Mr. Morawetz says:—

“There is no objection to a meeting held in a foreign jurisdiction, provided all the shareholders give their consent. And in the absence of an express statutory prohibition, there appears to be no reason why the shareholders in an ordinary business corporation should not provide in their articles of association that meetings may be called at convenient places outside of the State under whose laws the company is formed.”

“No valid objection can be made to a stockholders’ meet-

ing held in a foreign jurisdiction, provided all the shareholders give their consent to such meeting or ratify its result."

Handley vs. Stutz, 41 Fed. Rep. 531.

Upon the question of meetings, the rule has been evolved by the Supreme Court of the United States, which practically leaves no room for discussion; it effectually pushes aside all the State decisions on the subject of meetings of any character, as follows:—

"Nor were the proceedings of such meetings any less binding upon those participating in it by reason of the fact that it was held outside of the boundaries of the State under the laws of which the company was incorporated. By act of the Kentucky Legislature it is provided that all election of directors and other officers by private corporations shall be held within the territorial limits of the State of Kentucky, and that any such election held outside of Kentucky shall be void. Beyond the election of officers, however, there is no statutory restriction of corporate action to the limits of the State, and in the absence of such inhibition, the proceedings of such meeting would, with regard to directors' meetings, be binding upon all those participating in it as well as upon those acting upon the faith of its validity or receiving the stock authorized to be issued at said meeting. It is true that there are cases holding that stockholders' meetings can not be legally held outside of the home State of the corporation, but the question has generally arisen where a majority present had attempted by their action to bind a dissenting minority, or had taken action prejudicial to the rights of third persons. Indeed, so far as we know, the authorities are uniform to the effect that the action taken at such meeting was binding upon those who participated in or partook of the benefits of them. In this case the meeting was attended by all the stockholders but two, who were present by proxy.

"The vote increasing the stock was unanimous, and it does not lie in the mouth of those who participated in this act, or received the stock voted at this meeting, to question its validity."

Handley vs. Stutz, 139 U. S. 417.

The converse of the proposition respecting stockholders' meetings for the election of directors would be equally true that, if it was not inhibited by statute, then stockholders can

hold any meeting out of the State of formation with like force or effect as within the State.

Certainly the business corporations are holding their initial meetings, forming Articles of Incorporation, signing and acknowledging them, all without the State, and as soon as the articles are filed and fees all paid, in a foreign State, they hold the organization meetings and organize the corporation for business and all other meetings at their home with perfect impunity. This is beyond a doubt the general practice. Who's injured? Who's wronged? Who has the right to complain? There certainly must be some wrong or injury, or there is no right of complaint from any source. It certainly would not lie, as was said in *Handley vs. Stutz* supra:—"in the mouth of those who participated in this act or received the stock voted at this meeting to question its validity."

§ 131. Organization Meeting Business to be Transacted.

Having settled the place where stockholders can hold their organization meetings, and that the business to be transacted is the mere business of the corporation, that does not concern the State in any particular, unless the Legislature has enacted statutes with reference thereto, it now becomes necessary to descend to the particulars of the business of the organization meeting.

However, before the stockholders meet, the secretary pro tem of the initial or formation meeting, and who has the minutes of the proceedings up to the date of the organization meeting, should give each stockholder or incorporator notice of such meeting in order to secure a full attendance, either in person or by proxy. (An incorporator's interest may be represented by proxy even before stock are issued.) The notice should state the time, place, and the purpose of the organization meeting.

§ 132. Notice of Organization Meeting, No. 5.

St. Louis, Mo., March 2, 1904.

Mr. B.,

St. Louis, Mo.

Dear Sir: You are hereby notified that, pursuant to the call

of the president pro tem, the incorporators of the "Leap to Light Mining Company" will meet at the office of John Jones, 25 Canal St., St. Louis, Mo., on the 10th day of March, A. D. 1904, at 2 o'clock P. M., to consider the essentials of the organization of the "Leap to Light Mining Company," and to transact any unfinished business that may come before the meeting.

Yours very truly,

C., sec. pro tem.

Notices of meeting should always contain three things,—time, place, and purpose of the meeting. As the organization meeting would possibly be attended fully, no question whatever would arise in regard to it, but any other meetings, as the stockholders' annual meeting, or in other special meetings, it is a very important notice, and the secretary should always be very particular to see that each and every one had a proper notice. Sometimes, by statute, it is necessary to publish these notices in a newspaper as well as to send them or deliver them to the members of the company. In such case, each and every requirement should be particularly complied with, as a failure would furnish a groundwork for any one dissatisfied with the proceedings of the meeting to set the whole proceeding aside.

Ordinarily, to be certain, the stockholders meet and sign a waiver of notice, which may be to the effect that they waive the written notice of the time, place, and purpose of the organization meeting.

§ 133. Notice and Waiver of Organization Meeting, Form No. 6.

We, the subscribers, being all the stockholders named in the Articles of Incorporation of "The Leap to Light Mining Company," hereby waive notice of the time, place, and purpose of the first meeting of said company, and fix the 10th day of March, A. D. 1904, 2 o'clock P. M., as the time, and the office of John Jones, 25 Canal St., in St. Louis, Mo., as the place of the first meeting of said company, and certify the purpose of this meeting is to organize the above corporation.

(Signed)

Mr. A. Mr. C.

Mr. B. Mr. D.

Mr. E.

This formality may and usually is all dispensed with in ordinary business corporations, and is necessary only to keep up records, which is preferable.

The secretary in his minutes usually designates who are present, which would appear to practically be sufficient.

The order of business or program of the corporation is usually prepared not only for the organization meeting, but for all other meetings, and handed to the president by the secretary.

The president pro tem and secretary pro tem that have acted all along for the stockholders will take charge of the meeting, or open the business of the meeting, by calling the house to order and stating the purpose of the meeting.

§ 134. The Purpose of the Meeting is to Organize the Corporation for Business, Form No. 7.

The order of business to be transacted will be about as follows:—

1. Presentation of the charter or Articles of Incorporation.
2. Adoption of by-laws.
3. Election of directors.
4. Election of the president and other officers, if that is desired to be done by the stockholders.
5. Adoption of a seal by the corporation.
6. Exchange of property for stock.
7. Books of the corporation.
8. Adoption of form of stock certificate.

ELECTION OF INSPECTORS AT INSPECTION MEETING.

§ 135. Some Companies Have Inspector of Elections.

On motion of Mr. D., Mr. E. was elected inspector of elections. Thereupon, on motion of Mr. C., the stockholders proceeded to election by ballot to vote for a board of directors for the ensuing year.

If the board of directors has been designated in the Articles of Incorporation, then the election of the board of

directors at the organization meeting of the stockholders would necessarily be dispensed with, but it rarely ever happens that a board of directors is required to be designated in the charter or articles, hence that is one of the matters that properly comes before the organization meeting of the stockholders.

BY-LAWS.

§ 136. Permanent Rules of Corporation.

The by-laws also is a paper which are the permanent rules or enactments of the corporation. They descend to the detail work of the company, and are intended to follow after and conform to the charter. They should be prepared with due care under the law where the charter is obtained, so as not to conflict with either the charter or the general law. They should also be reasonable and fair, and then should be strictly observed. By-laws are usually prepared beforehand by the attorney, or whoever prepares the charter, and then submitted to the stockholders at their first meeting for adoption. The stockholders can adopt the by-laws section by section, or article by article, in whatever form they are prepared, or they may, after their reading, be sufficiently satisfied with them to adopt them as a whole. The by-laws may be amended from time to time, or new ones made to meet the necessity of the occasion.

§ 137. Secretary's Minutes of Permanent Organization Meeting, Form No. 7.

Minutes of the first meeting of the stockholders may be in the following form:—

A meeting of the stockholders of "The Leap to Light Mining Company" was held on the 10th day of March, A. D. 1904, at 2 o'clock P. M., at the office of John Jones, 25 Canal St., City of St. Louis, and State of Missouri. All of the incorporators or subscribers to stock named in the charter or Articles of Incorporation were present; to wit: Mr. A., Mr. B., Mr. C., Mr. D., and Mr. E. Mr. A. called the meeting to order. On motion of Mr. C., seconded by Mr. D., Mr. A., the chairman pro tem, was unanimously elected permanent chair-

man of the meeting, and Mr. B., secretary, whereupon all the members or stockholders or incorporators signed notice of a waiver of the time, place, and purpose of the meeting.

Notice was presented to the meeting by the chairman to be filed and spread upon the minutes. The secretary then reported to the meeting that the charter or the Articles of Incorporation of the company had been duly recorded in the office of the recorder of Mericopa Co., Ariz., on the 5th day of March, A. D. 1905, in Book 25 of Records of Corporation, page 200, and after being so recorded, a certified copy was properly filed in the office of the territorial auditor, and that all requirements of law had been complied with to effect the incorporation of the company.

The charter was then presented and read to the meeting, and, on motion of Mr. E., the same was ordered filed and the secretary was ordered to copy the same into the minute records of the company.

Thereupon the secretary reported that the by-laws had been prepared and were in his possession, whereupon the chairman ordered the same to be read to the meeting.

After hearing the by-laws read, it was moved by Mr. C. that the by-laws be read and adopted chapter by chapter. Motion carried. By-laws read and adopted.

§ 138. Directors.

The directors of a corporation are one of the important factors of the corporation, and their make-up should be of able and close-calculating individuals, as success or failure of the enterprise usually depends upon the wisdom of the board of directors. The number of directors is sometimes fixed by a statute or charter, but usually by the by-laws. A small board of directors is preferable, as they can act more rapidly and promptly in any matter that requires their attention.

If, under the law where the corporation is to be formed, it is required that the board of directors shall be designated in the charter, then it may be one of the essential ingredients to be passed upon at the formation meeting; otherwise it would be left as a matter of business for the stockholders, and more properly come up as a by-law matter when the stockholders would pass upon the by-law matter at the organization meeting.

An election was then held, and the inspector reported that the following persons or stockholders of the company had been elected directors by a vote of the whole number of shares held by the stockholders; to wit:—

Mr. A., Director.

Mr. C., Director.

Mr. E., Director.

§ 139. President.

The election of the president at the organization meeting is a proper matter for the stockholders, but it is just as proper to leave it to be done by the board of directors. It is a matter of discretion with the stockholders what they will or will not do in the matter of electing a president.

The minute may be that Mr. B. nominated Mr. C. for president, and upon a return of the ballots by the inspectors, Mr. C. was unanimously elected president of the company.

Or the minute may be that the election of president was left to the board of directors to determine.

§ 140. Seal.

Moved and seconded that the secretary be instructed to procure an aluminum seal, circular in form, with the words, "Incorporated in 1905," in the center, with the name of the company upon the face and within the outer rim, same as indicated by the stockholders at the formation meeting.

§ 141. Exchange of Property.

Moved and carried that the stockholders here order the directors to assess the capital stock twenty-five per cent of the whole amount of each share taken, payable in cash to the treasurer within thirty days after the election and qualification of the treasurer.

If any other exchange of property is to take place for the stock, the stockholders can authorize it to be done by a resolution of the incorporators or stockholders acting at the meeting.

§ 142. Books.

Moved and carried that the secretary procure for the use of the corporation the usual and regular books used by cor-

porations in keeping a record of all their meetings and for the record of their business transactions.

§ 143. Which Books Will Be About as Follows.

1. Universal record, where the Articles of Incorporation, by-laws, and names of the stockholders will be copied and kept, minutes, etc., of all meetings, and all other doings of the corporation that necessitate a record of the corporate working machinery.

2. Stock-book, in which are the blank shares of stock.

3. Transfer book is where a record of the transfer of shares is kept, when shares are sold or disposed of and new shares are issued to the purchaser.

4. Journal, ledger, etc., where all the business accounts of the company are kept.

After which, "on motion" of Mr. E., the meeting was adjourned to meet at the same place on the 12th day of March, A. D. 1905.

(Signed) Mr. A., Chairman,
 Mr. B., Secretary,

§ 144. Signing the Minutes.

When the minutes are written up, they should be signed by the secretary, and it is customary for the president also to sign the minutes, as many disputes may thereafter arise in regard to the minutes, and if they are thus authenticated, it may be that many vexed questions may be thus avoided.

See Roberts' Rules of Order, pp. 126, 162-164.

The minutes of the former meeting, having been approved and signed, become a part of the records of the corporation, which should be carefully preserved in such form as to be ready and accessible at all times to any stockholder or officer. The purpose of having the trend of the action of the incorporators so kept is to protect the members at all times from any unexpected action or unfair dealing; also to preserve the minutes so that in any legal contest that may thereafter arise, the minutes may be used not only to refresh the memory of those who participated in the meeting, but also to be used

as evidence for the company or any member of the company.

These suggestions are only intended as directory, as it is optional with the stockholders what plan they will pursue. The parliamentary law of the country applicable to all assemblies is always accessible wherein full instructions for all deliberative assemblies are found. Organizing a corporation is nothing less than any other assembly, such as a Legislature or council of a city, only it has nothing of a public nature in it.

§ 145. Corporation Republics at Common Law.

Three formed a corporation in the Roman law. They were republics in and of themselves; they were called bodies politic; they could not pass laws that contravened the laws of the land, nor did they look to the laws of the land for any authority to contract or perform any other act necessary to carry out the purpose of the corporation. It required no act of sovereignty to bring them into existence; no laws were passed for their regulation, nor did the State have anything to do with their close. They rested on their time-immemorial usages and customs for their beginning, their existence, and their end, provided they were not contrary to the law.

"The legal attributes of a corporation have been worked out with great fullness and ingenuity in the English law, but the conception has been taken full-grown from the law of Rome."

Werner Encyclopedia Britannica, vol. VI, p. 432.

§ 146. English Adopted Roman Law.

"When English lawyers come to deal with such societies, the corporation law of Rome admitted of easy application. Accordingly, in no department of our law have we borrowed so copiously and so directly from the civil law."

Werner Encyclopedia Britannica, vol. VI, p. 432.

AT THE COMMON LAW OF ENGLAND.

"The charter of a corporation is regarded as being of the nature of a contract between the king and the corporation. It will be construed more favorably for the crown and more strictly as against the grantee. It can not alter the law of the

land, and it may be surrendered, so that if the surrender is accepted by the crown and enrolled in chancery, the corporation is thereby dissolved."

Werner Encyclopedia Britannica, vol. VI, p. 433.

The making of by-laws, the election of directors, or appointment of any agent for the corporation, are contracts one and all.

These original powers threading through the history of the corporate invention come from the earliest existence down through the common law of England to the present time, and found in most all of the statutes.

The source of corporations originally within the incorporators, molded into a prerogative of the king by the plastic English for their emolument, but now, by act of Parliament, similar to the statutes of the States of our Union.

All show the freedom of right, of origin, and of contract in organizing and contracting corporate business.

It is not more important to know what the corporation has the right to do as to know just how to do it.

In all such cases the statute of the particular State must be looked to, to see just how far the statute has interfered with common incidents to corporation by the Legislatures.

It is in some quarters thought essential that the corporation receive all of its powers from legislative enactments. Nothing could be further from the truth. If the statute granted no power whatever, the corporation would nevertheless have all of its immemorial incidents or rights or powers at common law, which are as broad as legislative enactment could possibly make them.

§ 147. Another Form of Minutes of Organization, Form 8.

Another form of the first or organization meeting of the stockholders adapted to the laws of New York. It is the practice under the laws of New York to designate the first board of directors in the charter. That feature of the action of the organization meeting of the stockholders is of course omitted. It might be well for the stockholders to signify their approval of the board, stated in the charter.

This may be adopted or modified so as to meet the requirements of the business of a corporation under the laws of any State of the Union.

Meeting of the "South Sea Guano Company" held March 10, 1904. Pursuant to written call and waiver of notice, the first meeting of stockholders of the "South Sea Guano Company" was held in the office of Reynold Jackson, 125 Wall St., N. Y., at 10 o'clock A. M., on the 10th day of March, 1904, with all the stockholders present either in person or by proxy.

Mr. A. was chosen chairman and called the meeting to order. Mr. B. was appointed secretary of the meeting. The following stockholders were present in person:—

Mr. A.	20 shares.
Mr. B.	30 shares.
Mr. C.	10 shares.

The following stockholders were present by proxy, duly filed with the secretary:—

Name	Name of Proxy	Share Subscribed
Mr. D.	J. Miller	20
Mr. E.	E. McKee	20

The Secretary presented the call and waiver of notice pursuant to which meeting was held, duly signed by all the incorporators of the company. Said call and waiver was ordered spread upon the minutes as follows:—

§ 148. Call and Waiver of Notice, Form 9.

We, the undersigned, being all the stockholders and incorporators of the "South Sea Guano Company," do hereby call the first meeting of the stockholders thereof to be held in the office of Reynold Jackson, 125 Wall St., N. Y., at 10 o'clock A. M., on the 10th day of March, 1904, for the organization of the corporation, and the transaction of all such business as may be incident thereto, and we hereby waive all requirements as to notice of such meeting and consent to the transaction thereof of any and all business pertaining to the affairs of the company.

Dated New York, March 10, 1904.

(Signed) Mr. A. Mr. B. Mr. C. Mr. D. Mr. E.

§ 149. New York Designation of Articles of Incorporation.

Certificate of incorporation is used, as those are the terms

used in New York to designate Articles of Incorporation, or charter.

The chairman then presented a certified copy of the certificate of the incorporation of the company, and stated that said certificate had been filed with the secretary of state, and recorded by him on the 5th day of March, 1905, and that a duplicate thereof had been filed for record with the county clerk on the 7th day of March, 1905.

Upon motion duly made and carried, said certificate of incorporation was ordered received, and the directors named therein were recognized as the directors of the company, and the secretary was instructed to spread the said certificate upon the first pages of the book of minutes.

The chairman also presented a form of by-laws prepared by John Barnes, Esq., counsel for the company, which was read, article by article, and as a whole, unanimously adopted by the company, and ordered entered in the minutes book immediately succeeding the certificate of incorporation.

The secretary then presented a written proposal from Gilbert St. Clair, of 100 Broad St., N. Y., offering to transfer and assign to the company certain property, as set forth in said proposal, in exchange for the entire capital stock of the company, to be issued to his order, full paid, non-assessable.

§ 150. Proposal to Exchange Property for Stock, Form 10.

100 Broad St., N. Y., March 8, 1904.

To the Stockholders and Directors of

The South Sea Guano Company,

New York, N. Y.

Gentlemen: I hereby offer you in exchange and full payment of entire capital stock of the South Sea Guano Company, including shares subscribed for by the incorporators (payment of which by agreement with them, in event of your acceptance of my proposal, I assume), the property belonging to me as located and situated in the South Sea Islands, and which consists in six large caves containing Guano dust in unexplored quantities, and is of the reasonable value of \$100,000. The same is also free and unincumbered, and the title perfect in me. If said proposition is accepted, the entire capital stock of your company, excepting the shares already subscribed for, is to be issued to my order full-paid and non-assessable against the delivery to your representative of such duly executed deeds

and assignments of the above property as may be satisfactory to your attorneys.

In the event of your acceptance of the foregoing proposition, I shall donate to your company and turn over to your treasurer, or some trustee for your company to be named by you, not less than \$20,000 face value of the stock received by me, said stock to be used for the purpose of providing working capital for the company, out of the discretion and under the direction of your board of directors.

Yours very truly,
Gilbert St. Clair.

After due consideration and discussion, said proposal was ordered received, and the following resolution in regard thereto was moved, seconded, and carried by unanimous vote.

§ 151. Form Resolution Accepting Offer of Proposal to Exchange Property for Capital Stock, Form 11.

Whereas, a proposition has been received from Gilbert St. Clair offering to sell, assign, and convey to this company the property belonging to him, situated in the South Sea Islands, known as six large caves of Guano dust, all as set forth in said proposition, in exchange for the entire capital stock of the company, to be issued full paid and non-assessable to the order of the said Gilbert St. Clair;

Whereas, it appears to the stockholders of this company that the said property is desirable for the purpose of the company, and is reasonably worth the purchase price thereof; now therefore,—

Resolved, that the said proposition for the exchange of said property for the entire capital stock of this company as set forth in said proposition, be and the same is hereby approved, and the board of directors of this company are hereby authorized, empowered, and instructed to accept the said proposition and to cause the entire capital stock of the company to be issued for the said property, in accordance with the terms of said proposal.

There being no further business before the meeting, it was adjourned.

(Signed) Mr. A., President,
(Countersigned) Mr. C., Chairman.

The feature of the above proposition wherein the said St. Clair proposed to donate to the South Sea Guano Co. certain shares of stock to remain in the treasury may be varied to

suit the interests or business enterprise in which the incorporators may be concerned. Mr. St. Clair might retain the 20,000 shares and sell them upon the market and place the money in the treasury himself if he so desired, and it would be equally as legal or proper as the manner in which he has done, or he might place the said shares in the hands of the president or treasurer to be sold, or in whatever manner he may see fit, or is agreed upon between him and the company, to reimburse or provide a cash-working capital in the treasury, as this is the purpose of so placing the shares with the company or in the company as treasury stock.

In some States, as in New York or New Jersey, for instance, inspectors of elections are appointed by the president and sworn, but this is possibly unnecessary in any ordinary corporation, as these meetings are usually conducted honest, fair, and most amicable.

§ 152. Organization Meeting by Proxy.

Where the statutes require the stockholders to hold their organization meeting within the State of formation, it then becomes necessary where the stockholders are citizens of a foreign State to go into the State where incorporation was had, and organize or find an avenue by and through which their presence may be actually in one place and fictitiously in another, possibly a thousand miles away.

Some Legislatures have been wise enough to put a clause in their statutes expressly granting the formers of corporation, in express terms, the right to hold the meetings without the State. This was for the purpose of inviting outside citizens to do business with their State and to overcome the false idea that corporations had no power except that given by statute.

Other States and Territories are silent in regard to the holding of meetings of any kind. Wherever the statute is silent, the stockholders have the inalienable right to hold meetings where it is most convenient and business-like for them or most to their own interest. This right follows the

corporation at the common as well as the civil law. It has ever been their right to make all contracts necessary to carry on the working machinery of their business.

Where it becomes necessary to hold the organization meeting in the State of formation, or any other meeting under statutory requirement, the genius of circumvention has and always is equal to the genius of invention, and the scheme of proxy meetings have been resorted to, and sustained by authority, to overcome the irksome duty of going to a State foreign to their own domicile.

The term "proxy" is a very ancient term. Its use as a technical term in the United States is different from its use in ancient times.

In ecclesiastical law, with which our jurisprudence is not encumbered, it meant one who is appointed to manage another's estate (Black's Law Dictionary, 960). In England it means one who is appointed or deputed to vote in another's stead, as members of the House of Lords have the right to vote by proxy.

Blackstone, vol. 1, p. 168.

Voting by proxy is one of the thousands of contracts that the stockholders of corporations can make and do make. It is a simple contract between stockholders or between stockholders and others wherein the stockholder deposes or appoints another to vote his stock at a meeting of some kind. It is the appointment of an agent pure and simple by a stockholder, by a sort of power of attorney not under seal. Under the laws of Arizona, a corporation is given full power to make contracts. The stockholder also has the inalienable right to make contracts. Hence no doubt exists in law or fact that the right under Arizona law exists to vote by proxy. The right to make contracts under Arizona law is unlimited, both as to the corporation and its stockholders. Why can not the stockholders make a proxy contract? The voting by proxy is a right inherent in the stockholders; they can make it one of their by-laws.

Freedom in business is one of the inalienable rights of every citizen of the United States, whether he or they prosecute that business under the plan or system of incorporation.

The courts do not pioneer and blaze the way for business enterprise, neither do they follow in the rear to flank and strike under the belt and cripple the enterprises of individuals, neither do they sit in judgment upon the business of the people, to which and through which all must pass muster before business is launched or carried out.

Neither can courts or legislators abridge or deny the right of contract among individuals. Why should the right be abridged or denied to individuals when doing business under the plan of incorporation?

If the right of contract can be denied people when they are doing business under the plan of incorporation, then the courts and Legislatures can do indirectly that which the constitution expressly protects and forbids. Making contracts is one of those rights that does not require the decision of a court for its foundation or its support.

Where the statute gives the right to vote by proxy, it can not be taken away by a by-law.

Bank vs. Superior Court, 104 Cal. 646; 38 Pac. 452.

Proxy may be signed in blank by the giver and filled in by the receiver, but they can not be irrevocable.

Matter of Townsend, 46 N. Y. St. Rep. 135; Matter of Germicide Co., 65 Hun. 606; 20 N. Y. Sup. 495; Matter of White, 45 Hun. 580.

An irrevocable power of attorney can not be given by the owner of stock to one who has no interest in the stock.

Clowes vs. Miller, 60 N. J. Eq. 179; 47 Atl. 345.

Organization meetings may be held anywhere the statute does not inhibit by proxy.

Handley vs. Stutz, 139 U. S. 417; 11 sup. ct. 530; 35 L. Ed. 227.

Organization meeting, where the statute requires, may be held by two or more persons within the State requiring it

by proxy. Those holding the meetings need not be stockholders.

2 Cook Corp., foot page 1298; Sharp vs. Dawcs, 2 Q. B. D. 26.

In re Sanitary Carbon Co., 12, weekly notes, 223, the contrary has been held.

21 Law Rep. Am. 174.

A corporation can not attack its own existence.

Heath vs. Smelting Co., 39 Wis. 146.

Where stockholders appear at a meeting in person or by proxy, they can not complain, are estopped.

86 Am. Dec. 128; Camp vs. Byrerce, 41 Mo. 525; Ohio Ry. vs. McPherson, 35 Mo. 13; Ormsby vs. Cop. Co., 56 N. Y. 623; Handley vs. Stutz, 139 U. S. 417.

Persons dealing with it are estopped to deny its corporate existence.

Oregonian Ry. Co. vs. Navigation Co. (cc), 22 Fed. 248; Ohio Nat. Bank Wash. vs. Construction Co., 17 D. C. 524; 10 Cyc. 245, 248.

It is seen that neither the corporation, the stockholders, nor those creditors dealing with the company can complain of its meetings held out of the State; the only one left to complain is the State. The State fees are all paid; no tax remains unpaid. The State has no other or further interest in it than this. At the instance of whom or upon what right would it proceed? Certainly upon no other ground than fraud, and that in a clear flagrant case.

State Ex-inf. Atty.-Gen. vs. Hogan, 163 Mo. 43; 63 S. W. 378; State vs. Redemption Co., 51 L. Am. 1827; 26 So. 586; Coit vs. Amalgamating Co., 119 U. S. 343; Bank Ft. Mad. vs. Alden, 129 U. S. 372; Lloyd vs. Preston, 146 U. S. 630.

§ 153. Proxy Meeting, How Held.

Now how to hold a meeting by proxy.

The proxy meeting is no different to one that would be held if all the owners of stock were present.

Hold the imaginary meeting, write it up precisely as if it had been held at the place where the proxies are to be cast. Do everything on paper but dating and signing it. Then send the paper meeting to the State or place where the parties are who are going to vote the proxies, together with the proxies.

It is possibly only necessary to say in this connection in explanation of the method of procedure of a meeting by proxy is no different to a meeting held by the stockholders themselves, except in case of stockholders meeting by proxy, their minutes and all other things they are required to do are prepared to do beforehand, usually by the attorney for the company, complete and ready for the signatures of the persons who hold the meeting by proxy.

The proxy holders assemble or meet just the same as the stockholders would, and they proceed to hold the meeting, and we will presume we will hold the organization meeting, as we are now considering that feature of our corporate function.

1. The meeting is called to order, and one of the proxy holders acts as chairman or presiding person over the meeting.

2. Another one acts as secretary, precisely as if it were done by the stockholders in person. The proxy holders are acting upon authority of the proxy's in substance and in fact.

3. Secretary calls the roll; and he finds certain stockholders present by proxy, and he makes the statement in his minutes thus: John Jones, 1,000 shares, present by Joseph Smith proxy 1,000 shares, and so on through the list.

4. Production of proof notice of meeting and such waivers of notice are deemed necessary to be signed and spread upon the minutes.

5. The Articles of Incorporation or certified copy are next produced and spread upon the minutes. (It is not necessary that any statement accompany the production of the articles, except a note that such a matter was disposed of at the meeting.)

6. The by-laws are produced and read, and the chairman or president orders them spread upon the minutes.

The minute may be: By-laws of the company produced, read, upon motion duly made and carried, same was adopted as a whole and ordered spread upon the records.

7. Election of board of directors, the minute may be: Election of board of directors was had, which resulted as follows:—

Vick Randolph	500	Votes.
Roscoe Jones	600	“
Peter Cooper	400	“
Roy Rees	700	“
Rex McIntyre	480	“

Upon this showing, the chair will declare the election of the directors as the highest vote appears, or the election may appear by a vote on a member at a time; this will be governed by the judgment of those who prepare the minutes.

8. The exchange of property for stock will be effected in the same way as it is done if the stockholders were actually present. Resolutions will be passed precisely the same as a meeting by the stockholders in person; this will be prepared in advance and sent to the persons who are going to hold the meeting; all they will have to do is to organize their meeting and date the minutes and sign them; the signature will be precisely as though the meeting had actually and in fact been held by them.

John Smith, Chairman,

Thomas Wiley, Secretary.

These suggestions will probably be sufficient to enable any one at all familiar with meetings of a corporation to mold the meeting of a corporation wherein the stockholders participate in person into a meeting by proxy, as they are identical, except one is done by parties possibly not stockholders, while the other is by the stockholders. All the meetings of the corporations are of a similar character in form.

However, to make the proxy meeting more clear, a form will be found complete in the back of the book.

CHAPTER XVI.

STATUTES OF THE CORPORATION.

§ 154. By-laws Statutes of the Corporations.

Several forms of by-laws for various States will be found in the back of the book, where most of the forms given will be placed with a separate index for them. The law concerning by-laws will be briefed, showing the legal features of by-laws as explained and evolved by judicial decree characterizing what may and what may not be done.

The by-laws are the statutes of the corporation or little republic as it was originally understood.

§ 154a. By-laws.

The by-laws of a corporation are analogous to the enactments of Congress and the acts of the Legislatures, its charter being analogous to the Constitution of the United States, and all the constitutions of the States. It has been said to be a body politic. This was an old notion of the corporation, for that it was fashioned after the States or government, and not unlike either State or government, it has a right to pass laws for its own government. These laws must not, however, contravene the laws of the land or statutory enactments, nor the charter.

§ 155. By-laws Must be Reasonable, Not Against Law, nor Leveled at Individuals.

The by-laws must, in order to be effective and binding, first, in general, be reasonable; second, must not be contrary to public policy nor inconsistent with principles of the law; third, must not be directed against particular individuals, but must be general in their character; fourth, they must be consistent and within the purposes of the corporation; fifth, they must not impose additional liabilities on stockholders, nor seek to deprive stockholders of vested contract rights. It

was considered by Blackstone to be one of the important features of the corporation to make by-laws. A by-law is a permanent rule of action established by the corporation by which its affairs are to be conducted.

People vs. Crossley, 69 Ill. 195; Kearney vs. Andrews, 10 N. J. Eq. 70; Commonwealth vs. Woelper, 3 Serg. & R. (pa. P. 29); Juker vs. Commonwealth, 20 pa. St. 484; Newling vs. Francis, 3 T. R. 189.

The stockholders are the proper authority to make by-laws. There are a few functions belonging to the stockholders, and the making of the by-laws is one of those important rights. It is an inherent power in the stockholders. The directors have no such power.

Morton, etc. Co. vs. Wysong, 51 Ind. 4; Carroll vs. Mullanphy Sav. Bank, 8 Mo. App. 249; Brinkerhoff, etc. Co. vs. Home Lumber Co., 118 Mo. 447; Union Bank vs. Ridgely, 1 Har. & G. (Md.) 324; Re Regents', etc. Co., 2 W. N. 79; Rex vs. Head, 4 Burr. 2515; United Fire Assoc. vs. Benseman, 4 W. N. Cas. (Pa.) 1; Wilson vs. American Acad. of Music, 43 Leg. Int. 86; Morrison vs. Dorsey, 48 Md. 461.

It is proper, however, for the stockholders to delegate the power of making the by-laws to the board of directors.

In Rex vs. Spencer, 3 Burr. 1827, 1837, Lord Mansfield said:—

“Where the power of making by-laws is in the body at large, they may delegate their rights to a select body.”

Heintzelman vs. Druids' Relief Assoc., 38 Minn. 138; Stevens vs. Davidson, 18 Gratt. (Va.) 819; Rex vs. Westwood, 7 Bing. 1; Rex vs. Ashwell, 12 East 22.

The charter sometimes delegates the power of making the by-laws to the board of directors.

Cahill vs. Kalamazoo Mut. Ins. Co., 2 Doug. (Mich.) 124; Samuel vs. Holladay, Woolw. 400; S. C., 21 Fed. Cas. 306; Commonwealth vs. Gill, 3 Whart. (Pa.) 228; People vs. Sterling Mfg. Co., 82 Ill. 457.

Where there is a statute allowing by-laws to be made for

certain purposes, none others can be passed, or where the by-laws conflict with the charter, the charter prevails.

Ireland vs. Globe, etc. Co., 32 Atl. Rep. 921 (R. I.);
Republican, etc. Mines vs. Brown, 58 Fed. Rep. 644.

In order to be valid, a by-law must not conflict with the statute or Articles of Incorporation.

Guinness vs. Land Corp., L. R. 22 Ch. D. 349.

A by-law must not give the corporation a right to forfeit the stock for non-payment of subscription.

Re Long Island R. R., 19 Wend. 37; S. C., 32 Am. Dec. 429; Kirk vs. Nowill, 1 T. R. 118; Cf. Kennebec, etc. R. R. vs. Kendall, 31 Me. 470; Rosenback vs. Salt Springs Nat. Bank, 53 Barb. 495, 506.

A by-law allowing a stockholder to return his stock at a fixed price is illegal.

Vercoutere vs. Golden State Land Co., 116 Cal. 410.

Nor release a stockholder from statutory liability.

Wells vs. Black, 117 Cal. 157.

A by-law must not divest vested property rights of the stockholder.

Kent vs. Quicksilver, etc. Co., 78 N. Y. 159.

A by-law providing for the oath to stockholders to vote is void.

People vs. Kip, 4 Cow. 382.

A by-law seeking to exclude a stockholder or director from examining the corporate books is void.

People vs. Throop, 12 Wend. 183.

A by-law authorizing the restriction of the members of a church to vote in contravention of the statute is void.

People vs. Phillips, 1 Denio, 388.

A by-law imposing penalties for past tax is void.

Pulford vs. Detroit Fire Dept., 31 Mich. 458.

A by-law that transfers of stock are subject to the approval of the directors is void as against the rights of third persons.

Farmers', etc. Bank vs. Wasson, 48 Iowa 336.

A by-law requiring the approval of the president to the transfers of stock is void.

Sargent vs. Franklin Ins. Co., 25 Mass. 90.

By-laws in the following cases have been held void:—

Compelling members of an exchange to submit their controversies to arbitration on pain of expulsion or suspension.

State vs. Union Merchants' Exchange, 2 Mo. App. 96.

Providing that suits to collect insurance shall be brought in the county where the company exists.

Nute vs. Hamilton Mut. Ins. Co., 72 Mass. 174.

Enlarging the liability of stockholders for debts of the corporation.

Free School Trustees vs. Flint, 54 Mass. 539.

Certainly where the creditor did not expressly rely on the by-law.

Flint vs. Pierce, 99 Mass. 68.

Or where an assignee of the corporate creditor seeks to enforce the liability.

Gamble vs. Pomeroy, 121 Mass. 207.

Authorizing less than a majority of directors to act when the statute required a majority.

State vs. Curtis, 9 Nev. 325.

Compelling stockholders to retire a part of their stock.

Bergman vs. St. Paul, etc. Assoc., 29 Minn. 275, 282.

Prohibiting the use of the company's canal on Sundays.

Calder, etc. Nav. Co. vs. Pilling, 14 M. & W. 176.

Restricting the members as to their fishing business.

Adley vs. Whitstable Co., 17 Ves. Jr. 315; 19 Ves. Jr. 304.

Restricting the number of apprentices which members may have.

Rex vs. Cooper's Co., 7 T. R. 543; Rex vs. Tappenden, 3 East 186.

Restricting the sale of guns.

Gunmakers vs. Fell, Willes 384.

Restricting the transfer of seats in an exchange.

Ritterband vs. Baggett, 42 N. Y. Super. Ct. 556.

Railroad regulations as to passengers, etc., are not by-laws. Their validity, however, depends on their reasonableness.

State vs. Overton, 24 N. J. L. 435.

The by-laws of a city can not exclude from business all painters who do not belong to a guild.

Clark vs. Le Cren, 9 B. & C. 52.

See, however, as to city by-laws 1 Dillen, Mun. Corp., ch. 12, etc.

If a by-law is divisible, the invalidity of part does not invalidate the remaining part.

Amesbury vs. Bowditch, etc. Co., 72 Mass. 596.

For a valuable statement of the law in relation to by-laws, see,—

Re Long Island R. R., 19 Wend. 37, 41; Lumley, By-laws (English); 2 Am. & Eng. Ency. L. 705.

By-laws are construed as they are construed by the corporation, if that construction be reasonable.

State vs. Conklin, 34 Wis. 21.

By-laws are binding on all members.

Cummings vs. Webster, 43 Me. 192.

But strangers are not bound to know them.

Kingsley vs. New England, etc. Co., 62 Mass. 393.

Where the by-law was printed on an insurance policy.

Wait vs. Smith, 92 Ill. 385; Royal Bank, etc. Case, L. R. 4 Ch. App. 252.

A by-law can not give the president a casting vote in addition to his regular vote.

State vs. Curtis, 9 Nev. 325.

A by-law prohibits members from working with persons who are not members is void.

Thomas vs. Mutual Protective Union, 49 Hun. 171; Cf. S. C., 121 N. Y. 45.

There is no particular method or rules in regard to the method of enacting, amending, or repealing by-laws.

They need not be written.

Union Bank vs. Ridgely, 1 Har. & G. (Md.) 324, 413.

The corporation may adopt Cushing's Manual.

People vs. American Institute, 44 How. Pr. 468.

By-laws may be modified by usage.

Henry vs. Jackson, 37 Vt. 431.

The charter may require by-laws to be enacted under seal.

Dunston vs. Imperial, etc. Co., 3 B. & Ad. 125.

If amendments to the by-laws are, by the by-laws, to be made only after notice, that notice is necessary.

French vs. O'Brien, 52 How. Pr. 394.

Directors may disregard their own by-laws.

Martino vs. Commerce F. Ins. Co., 47 N. Y. Super. Ct. 520.

Power to make by-laws implies power to repeal them.

Rex vs. Ashwell, 12 East 22.

By-laws of mutual insurance associations may be changed.

Supreme Lodge, etc. vs. Knight, 117 Ind. 489.

A by-law may be repealed by a resolution inconsistent with it.

Royal Bank, etc. Case, L. R. 4 Ch. App. 252.

By-laws of a corporation must be proved. They can not be judicially noticed.

Haven vs. Asylum, 13 N. H. 532.

A by-law, to be reasonable, must be general. As was said in Budd vs. Multnomah St. Ry. Co., 15 Or. 413; 15 Pac. 659; W. D. Smith, Cas. Corp. 60, by Judge Strahan:—

“I think that any by-law enacted under this section of the code, to be reasonable, ought to be general; that is, it ought to affect every delinquent subscriber, and all delinquent stock alike, and it ought not to be directed against the stock or interests of a particular stockholder. These are essential requisites to a valid by-law.”

There are many other decisions to the same effect.

It was said Per Campbell, C. J., in *People vs. Young Men's Father Matthew T. A. B. Soc.*, 41 Mich. 67; 1 N. W. 931, that,—

“It is plain that all corporation by-laws must stand on their own validity, and not on any dispensation granted to members. They can not be subjected to any conditions which do not apply to all alike, and can not be compelled to receive, as matter of grace, anything which is matter of right. Neither, on the other hand, should there be personal exemptions of a general nature from any valid regulations that bind the mass of corporators.”

Other illustrations of reasonable regulations are:—

In *Re Petition of Klaus* (Wis.), 29 N. W. 582; *Farmers' & Merchants' Bank of Lineville vs. Wasson*, 48 Iowa 336; *Sargent vs. Insurance Co.*, 8 Pick. (Mass.) 90; *Bank of Attica vs. Manufacturers' & Traders' Bank*, 20 N. Y. 501; *Moore vs. Bank*, 52 Mo. 377; *Johnson vs. Laffin*, 5 Dill. 65 Fed. Cas. No. 7, 393; 1 *Cumming, Cas. Priv. Corp.* 608; *Affirmed* 103 U. S. 800; *Chouteau Spring Co. vs. Harris*, 20 Mo. 383.

§ 156. By-law Lien on Shares.

It is a disputed question upon the authority whether a corporation by a by-law can create a lien on its shares for debts due from its stockholders. By the weight of authority, it is held that the corporation has the right under the power to regulate transfers to create a lien in favor of the corporation for debts due from its stockholders. This lien will follow the stock into whomsoever hands it may pass, who do not occupy the protected position of a bona fide purchaser for value without notice of the by-law.

Morgan vs. Bank, 8 Serg. & R. (Pa.) 73; *VanSands vs. Bank*, 26 Conn. 144; *Lockwood vs. Bank*, 9 R. I. 308; *Cunningham vs. Trust Co.*, 4 Ala. 652; *St. Louis Perpetual Ins. Co. vs. Goodfellow*, 9 Mo. 149; *Child vs. Hudson & Bay Co.*, 2 P. Wms. 207; *M'Dowell vs. Bank*, L. Har. (Del.) 27; *People vs. Crockett*, 9 Cal. 112; *Mechanics' Bank vs. Merchants' Bank*, 45 Mo. 513; *Bank of Holly Springs vs. Pinson*, 58 Miss. 421; *Planters' & Merchants' Mut. Ins. Co. vs. Selma Sav. Bank*, 63 Ala. 585.

It has been held in New York that a by-law seeking to create such a lien is absolutely void, not only on the ground of unreasonableness, but because it interferes with the common rights of property, the free intercourse of third persons, and clogs the transfer and delivery of property, and for the further reason that it furnishes such corporation a remedy unknown to the law and practically substitutes the right of execution or attachment without judgment or an action at law.

Driscoll vs. Mfg. Co., 59 N. Y. 96-109.

In the absence of express statutory authority, a corporation can not provide for forfeiture of stock for non-payment of assessments, otherwise if it is expressly authorized.

Cahill vs. Insurance Co., 2 Doug. (Mich.) 124; In re Election of Directors of L. I. R. R. Co., 19 Wend. (N. Y.) 37; Budd vs. Multnomah St. Ry. Co., 15 Or. 413; 15 Pac. 659; W. D. Smith Cas. Corp. 60.

Where powers to enact by-laws are conferred by statute or charter, and are specifically pointed out, the corporation can not go beyond such limitation for any other purpose.

Ireland vs. Reduction Co., (R. I.) 32 Atl. 921.

For that it is a rule of interpretation that where a statute expressly mentions one thing, it is tantamount to the exclusion of all others.

Farmers' & Mechanics' Bank vs. Baldwin, 23 Minn. 198; Case vs. Kelly, 133 U. S. 21; Black, Interp. Laws, 146; 1 Cumming Cas. Priv. Corp. 106; Talmadge vs. Pell, 7 N. Y. 328.

This rule applies with equal force to the charter of corporations.

Case vs. Kelly, 133 U. S. 21.

And where the charter provides that the management of the corporation shall be in the board of directors, the stockholders can not by a by-law substitute an executive committee in the stead of the directors.

Temple vs. Dodge, 32 S. W. 514 (Tex. Sup.).

A corporation can pass no by-laws to destroy or impair or in any way deprive a stockholder of a vested contract right, unless he consents thereto.

Kent vs. Mining Co., 78 N. Y. 159, 179; Bergman vs. Association, 29 Minn. 275.

However, when a by-law is passed and becomes a part of the enacted rules of the company, one who comes in thereafter is bound thereby, for the reason that it is part of his contract just as much as if it were written into it.

Mathews vs. Associated Press, 136 N. Y. 333; 32 N. E. 981.

A by-law may be void in part and valid in part.

Amesbury vs. Ins. Co., 6 Gray (Mass.) 596.

Regularly authorized by-laws bind the stockholders whether they have signed or assented to them or not. They are presumed to have notice of them.

Palmetto Lodge vs. Hubbell, 2 Strob. (S. C.) 457; McFadden vs. Board, 74 Cal. 571; McFadden vs. Board, 16 Pac. 397.

It would follow that invalid by-laws bind no one, and even though a stockholder may not have objected to such a by-law until an attempt is made to enforce against him, still he is not estopped from asserting its invalidity.

Kolff vs. Fuel Exchange, 48 Minn. 215; Kolff vs. Fuel Exchange, 50 N. W. 1036.

§ 157. By-laws as a Contract.

In so far as a by-law partakes of the nature of a contract, the parties are the individuals on the one hand and the corporation on the other, and as far as the right of third persons to claim under a by-law is concerned, before they can claim rights under a by-law, they must have made their contracts especially with reference to it, otherwise they can not claim the benefits of it.

To illustrate: Where a corporation through its stockholders created a by-law in which they pledged their individual responsibility for any loans obtained by the corpora-

tion, it was held that a person seeking to establish the liability of the individual members by reason of the by-law must show that he gave the company credit by virtue of such by-law.

Flint vs. Pierce, 99 Mass. 68.

Nor can a by-law impose a liability on third persons, nor take away a right where the by-law is unknown to him.

Mechanics' & Farmers' Bank vs. Smith, 19 Johns (N. Y.) 115; Driscoll vs. Mfg. Co., 59 N. Y. 96, 109.

Nor is a third person bound by a by-law limiting the authority of an agent of the corporation.

Rathburn vs. Snow, 123 N. Y. 343; 25 N. E. 379.

If, however, a person enters into a contract with a corporation with full knowledge of a by-law, and does not exclude the by-law from the operation of the contract, the by-law will form a part of the contract and be valid and binding

Douglas vs. Ins. Co., 118 N. Y. 484; 23 N. E. 806.

Third persons having knowledge of the by-law may exclude it from the contract.

Martino vs. Ins. Co., N. Y. Super. Ct. 520; Trustees of Soldiers' Orphans' Home vs. Shaffer, 63 Ill. 243.

§ 158. Repeal and Amendments to By-laws.

By-laws being the enacted rule of the corporation, and in that respect similar respecting the power of their creation to the enactments of the Legislature, it would follow that where a corporation has the power to make by-laws, they would have the right to repeal or amend such by-laws, having due regard in any case to the general law of incorporation and the charter.

Smith vs. Nelson, 18 Vt. 511; Underhill vs. Improvement Co., 28 Pac. 1049 (Cal.).

Where a by-law sought to change the equal rights upon the issue of shares of stock and the stock thus issued, a new by-law providing for the issuing of preferred shares upon the surrender of original shares, and by a payment in addition to the original payment, such by-law is held void as against the

original stockholders dissenting as impairing the obligation of a contract.

Kemp vs. Min. Co., 78 N. Y. 159, 182.

Although the board of directors may have the power to make by-laws, they can not repeal or amend a by-law which is a limitation upon their power.

Stevens vs. Davison, 18 Grat (Va.) 819.

§ 158a. Waiver and Ratification By-law.

If a by-law is ignored in the course of the action and business of the corporation, and such action is acquiesced in by the shareholders, it will be treated as a waiver.

Susquehanna Mut. Fire Ins. Co. vs. Elkins, 124 Pa. St. 484; 17 Atl. 24; Underhill vs. Improvement Co., 93 Cal. 300; Clark vs. Ins. Co., 6 Cush. (Mass.) 342; 28 Pac. 1049.

The action of the board of directors in violation of a by-law may be ratified by the shareholders, and such ratification need not be concurred in by any more of the shareholders than is necessary to enact the by-laws in the first instance.

Underhill vs. Improvement Co., 28 Pac. 1049.

However, there is a difference between the board of directors ignoring a by-law and the other officers of the corporation. While the board of directors as has been seen, can violate a by-law, it is not within the scope of the other officers to ignore by-laws adopted by the stockholders for the corporate protection.

Hale vs. Ins. Co., 6 Gray (Mass.) 169; Mulrey vs. Ins. Co., 4 Allen (Mass.) 116.

CHAPTER XVII.

DIRECTORS' MEETING; ANY STATE.

§ 159. Directors' Meeting Any State.

A form of minutes of the first meeting of directors is here given that may be varied to suit any condition under the laws of any State.

§ 160. Order of Business of Directors.

The order of business for the directors' meeting may be in the following form:—

ORDER OF BUSINESS FOR DIRECTORS

1. Reading and disposal of any unapproved minutes.
2. Reports of officers and committees.
3. Unfinished business.
4. New business, election of officers, etc.
5. Adjournment.

These forms are only intended to cover the general routine that is liable to occur at the various meetings mentioned, and is not intended to be any set form to be followed, but can be varied according to the judgment or taste of the secretary or person in charge of the minutes.

§ 161. Directors' Minutes.

Minutes of the first meeting of directors of the Leap to Light Mining Co., held March 10, 1904.

Pursuant to a written call and waiver of notice, the board of directors of the Leap to Light Mining Co. held its first meeting in the office of S. P. Huntington, 100 Wall St., New York, on the 10th day of March, 1904, at 11 A. M. Mr. A. was chosen temporary chairman, and Mr. B. was appointed temporary secretary of the meeting. All the members of the board were present, being Mr. A., Mr. B., and Mr. E.

On request of the chairman, the secretary presented the call and waiver of notice pursuant to which this meeting was held, duly signed by all members of the board. It was ordered spread upon the minutes, and is as follows:—

§ 162. Call and Waiver of Notice Directors' Meeting.

We, the undersigned, being all the directors of The Leap to Light Mining Co., hereby call a meeting of the directors of said company, to be held in the office of S. P. Huntington, at 100 Wall St., N. Y., at 11 o'clock A. M. on the 10th day of March, 1904, for the purpose of electing officers of the company, acting upon a proposition to exchange property for the stock of the company, and doing all such other things as may be necessary and desirable in connection with the organization of the company or the promotion of its business, we hereby waive all statutory and by-law requirements as to notice of time, place, and object of this meeting, and consent to the transaction throughout of any and all business pertaining to the affairs of the company.

(Signed) Mr. B., Director.
Mr. A. "
Mr. E. "

Dated New York City,
March 8, 1904.

§ 163. Inspectors of Elections.

The chairman then appointed Mr. E. to conduct the election of officers of the company, the officers so elected to serve for the remainder of the corporate year and until the election of their successors. The votes of those present were then duly cast by ballot, resulting in the election by unanimous vote of the following officers:—

Mr. A., President.
Mr. B., Vice-President.
Mr. C., Secretary and Treasurer.

The permanent officers of the company thereupon took charge of the meeting. The secretary presented the following stock certificates for approval, which was by motion adopted as the stock certificates of the company as prepared by its directors, and the secretary was instructed to spread the said form upon the pages of the minute-book immediately following the record of the meeting then in progress.

The president then presented a written proposal from Mr. Gilbert St. Clair, of New York, offering to assign to the company, in exchange for its entire capital stock, certain specified mining property. The said proposal was ordered spread upon the minutes in full. The president also presented a resolution of the stockholders, approving the said proposal and authorizing and instructing the directors to accept same and take such

action in regard thereto as might be necessary to make such acceptance fully effective.

§ 164. Resolution Accepting Tender of Property.

The following resolution was thereupon moved, seconded, and unanimously adopted:—

Whereas, the property offered in exchange for the capital stock of this company by Mr. Gilbert St. Clair, in his proposition to the company, is adjudged by this board to be of the reasonable value of \$100,000, and to be necessary for the use and lawful purpose of this company;

Resolved, that said property be and hereby is, in accordance with the authorization and instruction of the stockholders of this company, accepted in full payment for the said capital stock of the company in accordance with the terms of said proposition; and the proper officers, the president and secretary, are hereby authorized and directed to receive the duly executed transfer and assignments of the property specified in such proposition, and to issue in exchange therefor the entire stock of the company, full paid and non-assessable, to such person or persons as may be designated by the written orders of the aforementioned Gilbert St. Clair, except as to the shares subscribed for by the incorporators, which shall be issued to them or to their order.

Upon motion duly made, seconded, and carried, the following resolution was adopted:—

§ 165. Resolution Instructing Treasurer to Open Account.

Resolved, that the treasurer is hereby authorized and instructed to open an account for the company with the Chemical National Bank, of New York City, and to deposit therein all funds of the company coming into his custody, such account to be in the name of the company, and the funds deposited therein to be withdrawn only by checks signed by the treasurer and countersigned by the president.

The following motions were then made, seconded, and duly passed by the unanimous vote of all present:—

Moved and carried, that the president be and hereby is authorized to lease for the use of the company, suitable offices in the city of New York, as may be necessary for the proper transaction of the company's business, such a lease to be for one year, with the privilege of renewal at the option of the company, at an annual rental not exceeding \$1,000 per annum, and the office so secured to be the principal office of the company within the city of New York.

Moved and carried, that the secretary be hereby instructed to procure a book of stock certificates in the usual and proper form adopted by this company, and a corporate seal, as provided for in the by-laws of this company; also all such stock and transfer books, and books of account, and such other stationary and supplies as may be necessary for the proper operation and record of the company's business and transactions.

Moved and carried, that the secretary be instructed to prepare or have prepared in due and proper form a certificate of the assignment of one half of the capital stock of the company, and for the due execution and verification thereof to file such certificate as required by law, and to spread a copy thereof upon the pages of the minute-book following the record of the present proceedings.

Moved and carried, that the treasurer be hereby authorized and instructed to pay of the company's funds the expenses properly incurred in the incorporation of the company or in connection therewith.

Moved and carried, that Mr. E. be appointed inspector of elections to serve at the first annual election of the directors of the company and at any election of directors by the stockholders subsequently thereto.

There being no further business for the consideration of the meeting, it was adjourned.

(Signed) Mr. A., Pres.

(Countersigned) Mr. B., Sec.

Each one of the papers mentioned and referred to in the secretary's minutes, to-wit: The proposal to exchange property; the call and waiver of notice; the stock certificate; and the evidential paper for the payment of one-half the capital stock, should each and every one of them be spread out, following the minutes by the secretary. This may appear to be keeping a double record of these papers, and a waste of time, but it will be found that in the long run, it will be much easier to refer to the minute-book for all such papers, than it will to dig into the archives of the company and through everything for the proper paper, and unless such a paper would be necessary as evidence, it could remain on file in the company's archives and no further reference to it need be had than to the minute-book.

CHAPTER XVIII.

OFFICERS AND AGENTS.

§ 166. Board of Directors.

Every private corporation has the power to elect officers and appoint agents to carry on the necessary affairs and business designated in its charter or Articles of Incorporation. Usually the management of private corporations is vested in a board of directors by the Articles of Incorporation. Where the charter or Articles of Incorporation are silent upon the subject, the stockholders, nevertheless, have the right to elect directors and invest them with the proper authority to supervise and to manage the affairs of the corporation. This power extends to the appointment of agents of all characters.

Hulbert vs. Marshall, 62 Wis. 590; 22 N. W. 852, 855.

Any person who becomes a stockholder in a private corporation thereby impliedly consents that such corporation shall be represented by such officers and agents as are necessary to carry out the purpose of the corporation.

Protection Life Ins. Co. vs. Foote, 79 Ill. 361.

The manner and form of the election of officers and the appointment of other agents may be prescribed by the by-laws or by the charter, and unless the manner and form of election and appointment of officers is so prescribed, no particular formalities are necessary.

Bank of Columbia vs. Patterson's Admr. 7 Cranch 299.

The use of a seal in the appointment of agents of a corporation is unnecessary unless it is required by statute or some rule of the corporation. Said Blackstone:—

“A corporation, being an invisible body, can not manifest its intention by any personal act or oral discourse. It therefore speaks and acts only by its common seal. For, though the particular members may express their private consent to

any act by words or signing their names, yet this does not bind the corporation; it is the fixing of the seal, and that only, which united the several assents of the individuals who compose the community, and makes one joint assent of the whole."

1 Blackstone Comm. 475; *Dunston vs. Coke Co.*, 3 Barn. & Adol. 125; *Horn vs. Ivy*, 1 Vent. 147.

However, this rule, like many other rules of the common law, has been wiped away by the necessity of the times and it is no longer necessary for a corporation to use a seal unless it is in such contracts as an individual would be compelled to use a seal, and it is now well understood that a corporation may appoint an attorney, agent or servant by parol or in writing with the same force and effect as an individual can without the use of a seal.

Pixley vs. Railroad Co., 33 Cal. 183; *Hand vs. Coal Co.*, 143 Pa. St. 408; 22 Atl. 709; *Bank of Columbia vs. Paterson's Admr.*, 7 Cranch 299; *Goodwin vs. Screw Co.*, 34 N. H. 378; 1 Cumming, Cas. Priv. Corp. 119.

Neither is it necessary for a corporation through its stockholders to make or enter into a formal vote to appoint an agent. For that,—

"Where one has the actual charge and management of the general business of a corporation, with the knowledge of the members and directors, this is evidence of his authority, without showing any vote or other corporate act constituting him agent of the corporation."

Goodwin vs. Screw Co., 34 N. H. 378; 1 Cumming Cas. Priv. Corp. 119; *Sherman Center Town Co. vs. Swigart*, 43 Kan. 292; 23 Pac. 569.

§ 167. Qualifications of Directors and Other Officers.

Unless required by statute, charter, or by-law, there is no particular qualification required to constitute a person eligible to the office of director or any other position in a corporation. It is customary, however, to prescribe that an individual to be a director or other officer must be a stockholder. If no provision or requisite is provided, the directors are usually chosen from among the stockholders and this is the better plan as the board of directors is an important

factor in the enterprise, and it is desirable always to have as much interest manifested as possible. There is no rule of law making it indispensable for a director or other officer to own stock in a corporation before he can qualify.

Wright vs. Railroad Co., 117 Mass. 226; 19 Am. Rep. 412; Cf. Dict. Penobscot R. Co. vs. Dummer, 40 Me. 172; 63 Am. Dec. 654.

The statute of New York has a provision that "the directors of every stock combination shall be chosen from the stockholders," and that, "if a director shall cease to be a stockholder, his office shall become vacant," and this has been held to require the actual ownership of stock, and that a mere trustee of stock is not eligible for the office of director.

In re Elias (Sup.), 40 N. Y. Supp. 910; Chemical Natl. Bank vs. Colwell, 132 N. Y. 250; 30 N. E. 644.

In some States, the statutes require that the directors, or a certain number of the directors, must be residents of the State as a qualification for a director. Where this is the law, a non-resident is not eligible.

Horton vs. Wilder, 48 Kan. 222; 29 Pac. 566.

Where non-residents are not prohibited from owning stock in a corporation, they are eligible as directors.

Detwiler vs. Com. (Pa. Sup.), 18 Atl. 990.

It is right and proper that a director may also hold another office or offices in the corporation, unless there is expressed authority to the contrary.

Sargent vs. Webster, 13 Metc. (Mass.) 497.

The directors are agents of the corporation and not agents of the stockholders.

Bank of U. S. vs. Danridge, 12 Wheat 113; Dana vs. Bank of U. S., 5 Watts & S. 246; Maynard vs. Fireman's, etc. Ins. Co., 34 Cal. 48.

Those who transact business with the corporation by and through its agents are not bound to inquire whether the agent was eligible to the office or not; it is sufficient that the

corporation hold out such person as its agent, and if a corporation elect a person who is ineligible to a position under a by-law, and permit him to transact business for it, it will be bound by his acts.

Dispatch Line of Packets vs. Bellamy Man'g. Co., 12 N. H. 205.

§ 168. Power of Directors.

The board of directors of a corporation being the avenue through which its business is transacted, necessarily have the widest scope. They make its contracts and supervise its business generally and specially. The board of directors act by vote of the board in making contracts or they authorize an agent to make contracts, or they may delegate the authority to an agent to make contracts, or they may accept the benefits of a contract made by an agent; and in all cases respecting all its contracts the board of directors, and not the stockholders, nor any of its other officers, neither the president, secretary, treasurer, nor general managing agent, is the original and supreme power in corporations to make corporate contracts.

All of the various acts and contracts entered into by the corporation are made by and through the board of directors. The board of directors either make or authorize notes, bills, mortgages, sales, deeds, liens, and all other contracts of the company. They have the power to appoint agents and govern the general policy of the corporation. The directors elect other officers and a person may hold any number of offices at same time. As was said by Throop on Public Officers, Sec. 30:—

“At common law there is no limit to the number of offices which may be held simultaneously by the same person, provided that neither of them is incompatible with any other.”

People vs. Greene, 58 N. Y. 295.

In the control of the corporate business in the prosecution of actions at law and equity and the general management of the same, the directors have a wide discretion. This discretion can not be interfered with by the stockholders.

In *McDougal vs. Gardner*, L. R., 1 Ch. D. 13, it was said:—

“There may be claims against the directors; there may be claims against officers; there may be claims against debtors; there may be a variety of things which a company may well be entitled to complain of, but which, as a matter of good sense, they do not think it right to make the subject of litigation; and it is the company, as a company, which has to determine whether it will make anything that is wrong to the company a subject matter of litigation, or whether it will take steps itself to prevent the wrong from being done.”

15 Fed. Rep., 360 note.

A majority of the stockholders can not go into court and dismiss an appeal against the will of the directors.

Railway Co. vs. Alling, 99 U. S. 463.

“Questions of policy management, of expediency of contracts or action of adequacy of consideration not grossly disproportionate, of lawful appropriation of corporate funds to advance corporate interests, are left solely to the honest decision of the directors, if their powers are without limitation and free from restraint. To hold otherwise would be to substitute the judgment and discretion of others in the place of those determined on by the scheme of incorporation.”

Ellerman vs. Chicago Junction, etc. Co., 49 N. J. Eq. 217.

It has been held that the discretion of the directors can not be questioned by the stockholders, much less interfered with.

See *Edison vs. Edison United Phonograph Co.*, 52 N. J. Eq. 620.

The discretion of the directors or the majority of the stockholders as to acts *intra vires* can not be questioned by single stockholders unless fraud is involved.

McMullen vs. Ritchie, 64 Fed. Rep. 253.

It has also been said in *Bloxam vs. Metropolitan R'y*, L. R., 3 Ch. App. 337, that:—

“The matters of internal arrangement which are beyond the province of the court, were properly admitted to be such as are within the scope of the company's powers.”

And in *Camblos vs. Philadelphia, etc. R. R. Co.*, 4 Brewst. 563, 591, S. C. 4 Fed. Cas. 1089, of the action of a stockholder it was said:—

“So long as those who manage the corporation keep within the limits of its charter, and commit or propose to commit no breach of their trust, he has no right to complain.”

Becher vs. Wells, etc. Co., 1 Fed. Rep. 276.

In *Bach vs. Pacific Mail S. S. Co.*, 12 Abb. Pr. (N. S.) 373, it was said:—

“No place can be found where the general management of corporate property has been subject to the restrictions of judicial power, unless indeed, in the case of a clear violation of expressed law, or a wide departure from chartered powers.”

Walker vs. Mad River, etc. R. R. Co., 8 Ohio 38; *Tuscaloosa Mfg. Co. vs. Cox*, 68 Ala. 71.

In *Ramsey vs. Erie Ry. Co.* 7 Abb. Pr. (N. S.) 156, it was said:—

“When directors are only unwise, or merely extravagant, or improvident, or slightly negligent, or merely misjudged in the performance of their duty, the remedy of stockholders is to elect other persons directors in their places.”

Bailey vs. Birkenhead, etc. Ry., 12 Beav. 433; *Edwards vs. Shrewsbury, etc. Ry.*, 2 De G. & Sm. 300.

The rules here announced are settled beyond question. Were it otherwise, there would be no safety or possibility in carrying on the business of the corporation. Dissatisfied stockholders would institute suits for the very purpose of embarrassing the business of the company. The corporate directors are the sole authority in the management of the corporation within their powers and they may and should use their own discretion as to what ought to be done, and in all acts *intra vires* where there is no fraud, the directors are the sole judges of the propriety of their own acts.

Symmes vs. Union Trust Co., 60 Fed. Rep. 830.

Where there is great hostility and violent internal commotion in a corporation, such as where there are two sets of directors elected by the stockholders, a court of equity

will take possession of the property by a temporary receiver.

Trade Auxiliary Co. vs. Vickers, L. R. 16 Eq. 303;
Featherstone vs. Cook, L. R., 60 Eq. 298, 303; Lawrence
vs. Greenwich F. Ins. Co., 1 Paige 587.

A stockholder' can question acts and contracts which are fraudulent *ultra vires* or *mala in se*.

Fountain Ferry, etc. Co. vs. Jewel, 8 B. Mon. (Ky.) 140.

Where the power of the management of the corporation is in the directors, the power is exclusive in its character. The stockholders as such in their collective capacity, can do no corporate act. The directors are their representatives and they alone are authorized to act.

McCullough vs. Mass., 5 Denio, (N. Y.) 575.

However, such an authority is limited to the business corporate acts, and not to the strictly corporate acts as is elsewhere shown in this work.

§ 169. Directors Limited.

It must not be understood or supposed that the powers of the directors are unlimited. They are only invested with the power to manage the affairs of the corporation, and here their authority ends. They have no power without the consent of the stockholders to effect any fundamental change in the corporation. Unless expressly authorized, they can not make by-laws nor increase nor decrease capital stock, nor authorize an amendment to the charter in any manner, nor dissolve the corporation. These functions are strictly within the power of the stockholder as well as the election of the directors themselves.

Eidman vs. Bowman, 58 Ill. 444; Metropolitan, etc. Ry. vs. Manhattan, etc. Ry., Daly (N. Y.) 377.

The board of directors, however, may, if the corporation is insolvent, make an assignment for the benefit of the creditors.

Burrill vs. Bank, 2 Metc. (Mass.) 163; Salt Marsh vs. Spaulding, 147 Mass. 224; 17 N. E. 316.

The directors as such can do no act that is not within

the powers especially set forth in the charter of the corporation. If they attempt to do so, and for any reason relief can not be obtained through the corporation, the stockholder has a right to bring an action either to enjoin it if it has not been performed, or to set it aside if it has been consummated. In such a bill, however, it must be shown that the stockholder has exhausted every available and reasonable remedy to obtain redress by application to the board of directors, and, if it is practicable, to call upon the stockholders as a body to act; that must also be shown.

Foss vs. Harbottle, 2 Hare; 1 Cumming, Cas. Priv. Corp. 693; Mozley vs. Alston, 1 Phil. Ch. 790; Russell vs. Waterworks Co., L. R. 20 Eq. 474; 1 Cumming Cas. Priv. Corp. 725; Hawes vs. City of Oakland, 104 U. S. 450; 1 Cumming, 1 Cummings Cas. Priv. Corp. 756; Allen vs. Wilson, 28 Fed. 677; Booth vs. Robinson, 55 Md. 419; Brewer vs. Boston Theater, 104 Mass. 378; Dunphy vs. Association, 146 Mass. 495; 16 N. E. 426; 1 Cumming Cas. Priv. Corp. 769; Mont vs. Trust Co., (Va.) 25 S. E. 244; Rathbone vs. Gas. Co., 31 W. Va. 798; 8 S. E. 570; Hersey vs. Veazle, 24 Me. 9; Greaves vs. Gouge, 69 N. Y. 154; Doud vs. Railway Co., 65 Wis. 108; 25 N. W. 533; Hazard vs. Durant, 11 R. I. 195; Black vs. Huggins, 2 Tenn. Ch. 780; Cogswell vs. Bull, 39 Cal. 320.

No doctrine in the law is better settled than that,—

“When the directors or officers of a corporation cause a loss of corporate property by negligence or culpable lack of prudence or failure to exercise their functions; or fraudulently misappropriate the corporate property in any manner, whether for their own benefit or for the benefit of a third person; or obtain any undue advantage, benefit, or profit for themselves by contract, purchase, sale, or other dealings under color of their official functions; or misuse the franchise; or violate the rules established by the charter or by-laws for their management of the corporate affairs; or in any other similar manner commit a breach of their fiduciary obligations toward the corporation, so that it sustains injury or loss, and a liability devolves upon themselves, then the corporation is the party to sue for equitable relief, and in such cases no equitable suit for relief can be maintained against the directors or officers by

the stockholders or stockholders individually, nor by a stockholder in a representative capacity on behalf of all the others similarly situated, unless the corporation either actually or virtually refuses to prosecute."

Doud vs. Railway Co., 65 Wis. 108; 25 N. W. 533.

Acts and contracts, if transacted by the directors, may be ratified by the stockholders, if within the power of the corporation, and will be implied if the delay is for an unreasonable time and no steps are taken to set the transaction aside.

State vs. Smith, 48 Vt. 266; Steger vs. Davis, 8 Tex. Civ. App. 23; 27 S. W. 1069; Aurora Agricultural & H. Soc., 80 Ill. 263; Reichwald vs. Hotel Co., 106 Ill. 439.

A corporation like a natural person may become bound by the act of a person assuming to act for it without authority if, however, it ratifies the act.

It may be said in general that any act the corporation has the power to authorize, if done by the board of directors, or any other officer or person, the corporation may ratify and the act will then be binding upon the corporation. In fact, the ratification may be implied from the conduct of the corporation.

Burrill vs. President, etc., 2 Metc. (Mass.) 163, W. D. Smith, Cas. Corp. 112; M'Laughlin vs. Railway Co., 8 Mich. 100; Leggett vs. Banking Co., 1 N. J. Eq. 541; Aurora Agricultural & Horticultural Soc. vs. Paddock, 80 Ill. 263; Reichwald vs. Hotel Co., 106 Ill. 439; Grape Sugar & Vinegar Mfg. Co. vs. Small, 40 Md. 395; see authorities cited *supra*.

A corporation may be bound by any person who consummates an act for the corporation.

See authorities cited *supra*

However, if an unauthorized act is done by any member, officer or other person for a corporation and the same is transacted under seal, the corporation can only ratify that character of an act by an instrument under seal. A parol ratification will render a contract binding in any parol contract.

See authorities *supra*.

Where an officer of the corporation issues negotiable paper of the corporation, the purchaser buys at his peril and the rule of *caveat emptor* applies. If, however, the paper is issued in the apparent scope of the authority of the agent or officer who acted merely wrongfully in the particular instance and the paper passes into the hands of the bona fide purchaser for value without notice, the purchaser will be protected.

Chemical Nat. Bank vs. Wagner, 93 Ky. 525; 20 S. W. 535; Page vs. Railroad Co., 31 Fed. 257; Wahlig vs. Mfg. Co. (City Ct. N. Y.), 9 N. Y. Supp. 739; Merchants' Nat. Bank vs. Citizens' Gaslight Co., 159 Mass. 505; 34 N. E. 1083; Credit Co. vs. Howe Mch. Co., 54 Conn. 357; 8 Atl. 472; Matson vs. Alley, 141 Ill. 284; 31 N. E. 419.

If the corporation has no power to enter into a contract, it has no power to ratify it.

"The powers of agents of corporations to enter into contracts in their behalf are limited, by the nature of things, to such contracts as the corporations are by their charters authorized to make. . . . The same want of power to give authority to an agent to contract, and thereby bind the corporation, in matters beyond the scope of their corporate objects, must be equally conclusive against any attempt to ratify such contract. What they can not do directly they can not do indirectly. They can not bind themselves by the ratification of a contract which they had no authority to make. The power of the agent must be restricted to the business which the company was authorized to do. Within the scope of the business which they had power to transact, he, as its agent, may be authorized to act for it, but beyond that he could not be authorized, for its powers extend no further."

Downing vs. Road Co., 40 N. H. 230; 1 Cumming, Cas. Priv. Corp. 148; Weckler vs. Bank, 42 Md. 581.

§ 170. De Facto Directors.

A *de facto* director is a director holding his office under color of election and has charge of the affairs of the corporation. Acting in such a capacity, such a director is capable of binding the corporation in any manner within the scope of the director's power, and this is true even though the elec-

tion at which he became a director is set aside and void and he is removed from office.

Mining Co. vs. Anglo-California Bank, 104 U. S. 192.

The board of directors may delegate authority to the committee or to one of their number, or to some other officer, or even an outsider, if they choose to perform acts for the corporation.

"The same want of power to give authority to an agent to contract, and thereby bind the corporation, in matters beyond the scope of their corporate objects, must be equally conclusive against any attempt to ratify such contract. What they can not do directly, they can not do indirectly. They can not bind themselves by the ratification of a contract which they had no authority to make. The power of the agent must be restricted to the business which the company was authorized to do. Within the scope of the business which they had power to transact, he, as its agent, may be authorized to act for it, but beyond that he could not be authorized, for its powers extend no further."

Downing vs. Road Co., 40 N. H. 230; 1 Cumming, Cas. Priv. Corp. 148; Weckler vs. Bank, 42 Md. 581.

Thus it may also authorize making a mortgage on real estate, sign securities belonging to the company, execute notes for money loaned to the company.

Burrill vs. Bank, 2 Metc. (Mass.) 163; W. D. Smith, Cas. Corp. 112; President, Directors & Company of Northampton Bank vs. Pepoon, 11 Mass. 288; Leavitt vs. Mining Co., 3 Utah 265; 1 Pac. 356.

They, however, can not delegate their own discretion. After they determine to do an act, they can then order or delegate another officer or person to transact the business.

Bliss vs. Irrigation Co., 65 Cal. 502; 4 Pac. 507.

§ 171. Directors' Meetings.

The rules governing the meetings of directors, when the management of a corporation is vested in the directors, by the charter, are first, that the directors may meet and transact the business of the corporation in another State. They must act, however, always as a board and not in their individual capac-

ity at a meeting regularly assembled. Second, they are agents of the corporation.

The first or formation meeting of the directors may be held out of the State.

Glymont Imp. etc. Co. vs. Toler, 80 Md. 278.

A by-law that regular directors' meetings shall be held in the State does not prevent special meetings outside the State.

Ashley Wire Co. vs. Illinois Steel Co., 164 Ill. 149;
Wright vs. Bundy, 11 Ind. 398, 404.

Where a mortgage of a railway incorporated by Indiana was held valid, though executed in Ohio.

Bassett vs. Monte Christo, etc. Co., 15 Nev. 293.

Where power to issue bonds and mortgage real property in Nevada was conferred at a meeting of directors held in New York, the corporation having been chartered by Pennsylvania,—but here the charter authorized the corporation to meet and act at any place in the United States.

Ohio, etc. R. R. vs. McPherson, 35 Mo. 13.

Where calls for payment of subscriptions to stock made by a board of directors at meetings held outside of the State creating the corporation were held to be valid.

Wood Hydraulic, etc. vs. King, 45 Ga. 34, in which the minutes of a meeting of directors held out of the State chartering their company were held to be evidence of the acts of the board in making contracts in other States. A directors' meeting out of the State may authorize a mortgage on real estate.

Saltmarsh vs. Spaulding, 147 Mass. 224; Reichwald vs. Commercial Hotel Co., 106 Ill. 439.

Galveston, etc. R. R. vs. Cowdrey, 11 Wall. 459, 476, in which it was held that bona fide holders of railroad bonds could not be prejudiced by the fact that the mortgage by which they were secured was executed by virtue of a resolution of directors at a meeting held out of the State which chartered the road.

Bellows vs. Todd, 39 Iowa 209, 217, where a conveyance of real estate was authorized.

Armes vs. Conant, 36 Vt. 744; McCall vs. Byram Mfg. Co., 6 Conn. 428; Smith vs. Alvord, 63 Barb. 415; Cf. Ormsby vs. Vermont, etc. Co., 56 N. Y. 623; Aspinwall vs. Ohio, etc. R. R., 20 Ind. 492, 497.

Corporations incorporated in New Jersey were formerly required by statute to hold their directors' meetings within that State.

Hilles vs. Parrish, 14 N. J. Eq. 380.

The president may call a meeting of the directors at a place other than the chief place of business.

Corbett vs. Woodward, 5 Sawyer 403; S. C., 6 Fed. Cas. 531.

A person who participates in a directors' meeting held out of the State can not object to it on that ground.

Wood vs. Boney, 21 Atl. Rep. 574 (N. J.).

The directors may hold their meetings outside of the State. Missouri, etc. Co. vs. Reinhard, 114 Mo. 218.

An assignment of a corporate mortgage may be executed in another State.

Gray vs. Waldron, 101 Mich. 612.

In Brockway vs. Gadsden, etc. Co., 102 Ala. 620, a meeting of the board of directors outside of the State was held to be illegal under the Alabama statute which regulates such meetings. A mortgage authorized by the board of directors' meeting held outside of the State is illegal, unless such meeting was authorized or its acts ratified by a vote of two thirds of the directors at a regular meeting in the State in accordance with the statute.

State Nat. Bank vs. Union Nat. Bank, 48 N. E. Rep. 82 (Ill.).

Special meetings of the directors may be held, although the by-laws do not provide for such.

United Growers' Co. vs. Eisner, 22 N. Y. App. Div. 1.

Meeting of board of directors, unless it is a regular stated meeting, must be upon due and proper notice of the time, place, and purpose of the meeting. A lack of strictness in regard to these plain requirements or necessary requisites will lead to confusion and possibly litigation, and it is considered always the better practice for a secretary, when the meeting of the board of directors is necessary, unless it be a regular meeting, and even then, to give notice of the time, place, and purpose of the meeting.

“That all the directors are entitled to notice, either express or implied, of any meeting at which any business is transacted, in order that the business may be binding upon all the persons concerned, admits of no question. . . . If the meetings held are regular meetings,—that is, such as provided for by the charter or by the by-laws, fixing time and place,—then notice thereof is implied. Of all other meetings, especially those at which any business not pertaining to the ordinary affairs of the corporation is transacted, express notice must be given of the time and place and the object or purpose of the meeting.”

Whitehead vs. Hamilton Rubber Co., 52 N. J. Eq. 78, 82.

An assignment of bank accounts by a corporation to its president, as collateral security, is not valid where no notice was given to all the directors of the meeting authorizing the assignment.

Whitehead vs. Hamilton Rubber Co., 52 N. J. Eq. 78.

A special meeting of the directors is void if no notice is given to absent directors.

Hill vs. Rich Hill, etc. Co., 119 Mo. 9.

A person who is elected a director, but does not accept, need not be notified of a directors' meeting.

Whittaker vs. Amwell Nat. Bank, 52 N. J. Eq. 400.

A meeting of a majority of the directors at an unusual time and place is not valid where the minority had no notice.

First Nat. Bank vs. Asheville, etc. Co., 116 N. C. 827.

The fact that a director owns or controls a majority of the

stock does not validate an illegally called meeting of the directors, even though he favored their action.

Hill vs. Rich Hill, etc. Co., 119 Mo. 9.

Where the directors of a bank are accustomed to hold directors' meetings at the bank whenever a quorum is present, this custom will be upheld, and a meeting is legal, although no notice thereof was given, there being no by-law or statute on the subject.

American Nat. Bank vs. First Nat. Bank, 82 Fed. Rep. 961.

Directors are required to take notice of an annual meeting, and no notice need be given of an adjournment thereof.

Western Imp. Co. vs. Des Moines Nat. Bank, 72 N. W. Rep. 657 Iowa.

Even though no notice is given to a director of a meeting of the board, yet where the matter passed upon by the board is one which he would be disqualified from voting upon, the meeting is legal.

Troy Min. Co. vs. White, 74 N. W. Rep. 236 S. D.

An assignment for the benefit of creditors, authorized at a meeting of the board of directors where a part of the directors were absent and had no notice thereof, is not valid.

Simon vs. Sevier Assoc., 54 Ark. 58.

Notice of a directors' meeting need not be given to a director who resides abroad, nor to another director who is traveling abroad. The court, however, refused to lay down the broad rule that no notice in any case need be given to directors who are abroad.

Halifax, etc. Co. vs. Francklyn, 62 L. T. Rep. 563.

Notice of a directors' meeting can not be waived in advance by a director where the time and purpose of the meeting have not yet been determined upon.

Re Portuguese, etc. Mines, L. R. 42 Ch. D. 160.

Where three of seven directors are non-residents, one having sold his stock, one traveling, and one inaccessible for

immediate notice, the four remaining directors may hold a meeting and authorize an assignment of the corporate property for the benefit of creditors. The assignment was held to be legal, the traveling director and the inaccessible director having subsequently voted in a meeting for the reelection of an assignee.

National Bank of Commerce vs. Shumway, 49 Kan. 224.

A mortgage authorized at a directors' meeting at which four were present and the other received no notice is illegal, the giving of notice being possible, and there being no necessity for immediate action.

Bank of Little Rock vs. McCarthy, 55 Ark. 473.

An assignment for the benefit of creditors, made by order of a directors' meeting at which three directors were present and the other two were not notified, is invalid, and no bar to a creditor's action to collect unpaid subscriptions.

Doernbecher vs. Columbia, etc. Co., 21 Oreg. 573.

Where a directors' meeting, according to the by-laws, may be called by the president, or if there is no president, by two directors, the two directors can not call it, even if the president refuses to do so. The acts of a meeting of a board so called are illegal, a majority of the directors only being present.

Smith vs. Dorn, 96 Cal. 73.

A director is entitled to notice of a meeting to elect a president. Undue haste and failure to give notice will suffice to set the election aside. A subsequent meeting of the board can not ratify it. The election must be held over again.

State vs. Smith, 15 Oreg. 98; 53 Pac. Rep. 1024.

A notice of a school trustees' meeting need not be given to trustees out of the State who could not have attended anyway.

Porter vs. Robinson, 30 Hun. 209.

In Harding vs. Van de water, 40 Cal. 77, a note given for an assessment upon a subscription which was called at a

special meeting of the board of trustees of a mining company, of which two of the trustees had no notice, was held to be void.

In *Farwell vs. Houghton Copper, etc.*, 8 Fed. Rep. 66, it was held that one who had been a shareholder and purchased all the property of the company at a meeting of the directors held without notice, at which he was present and knew that one director was absent, was bound to know that notice to such absent director was necessary, and that he was not a bona fide purchaser without notice.

Lane vs. Brainerd, 30 Conn. 565, holding that the corporate record of a meeting at which a quorum was present was presumptive proof that all the directors had been duly notified, whether living in the State or elsewhere.

Where the by-laws provided for special meetings, the time and place of which were to be fixed by notices countersigned by the secretary, it was held that a meeting of the requisite number of directors without previous agreement to meet on any fixed day or hour was not a meeting duly convened within the charter provision.

Moore vs. Hammond, 6 Barn. & C. 456.

To same effect in municipal corporation cases.

Smyth vs. Darley, 2 H. L. Cas. 789; *Rex vs. Carlisle*, 1 Stra. 385.

An adjourned meeting of directors may act to the same extent that the original meeting might have acted.

Smith vs. Law, 21 N. Y. 296; *Wills vs. Murray*, 4 Exch. 843.

A by-law enacted by the directors in reference to the calling of a directors' meeting, even if not complied with, does not invalidate the meeting.

Samuel vs. Holladay, Woolw. 400; S. C., 21 Fed. Cas. 306.

A quorum of directors may bind the corporation, although the other directors are not notified, there being no by-law or charter provision requiring notice.

Edgerly vs. Emmerson, 23 N. H. 555; *Contra Dispatch Line vs. Bellamy Mfg. Co.*, 12 N. H. 205.

An assessment made at an irregularly called directors' meeting is void.

Thompson vs. Williams, 76 Cal. 153.

Two out of three directors can not authorize a chattel mortgage, the third not having been notified of the meeting. The mortgagee was one of the directors.

Doyle vs. Mizner, 42 Mich. 332.

A corporate receiver can not object to a contract on the ground that the directors' meeting authorizing it was not properly convened, but the receiver may avoid corporate notes issued contrary to express statute.

Leavitt vs. Yates, 4 Edw. Ch. 134.

Bonds issued under authority of a meeting of two commissioners of a town without notice to a third commissioner are not valid.

Pike County vs. Rowland, 94 Pa. St. 238.

In Kersey, etc. Co. vs. Oil, etc. R. R., 12 Phila. 374, a lease was declared void because it was authorized only by a meeting of directors, of which part of the directors had no notice and were not present.

A special meeting of an executive committee is irregular unless notice is given to each member.

Metropolitan, etc. Co. vs. Domestic, etc. Co., 43 N. J. Eq. 626.

Where a subsequent meeting of directors expressly ratifies the acts of a preceeding meeting, any defect in the notice given of the latter meeting is cured.

County Court vs. Baltimore, etc. R. R., 35 Fed. Rep. 161.

Acts of a board of directors, no notice having been given to absent directors, may be valid by acquiescence.

Reed vs. Hayt, 51 N. Y. Super. Ct. 121; aff'd, 109 N. Y. 659.

Although an allotment of stock may be illegal by reason of notice not having been given of a directors' meeting, yet the

allotment may be confirmed by a subsequent legally called meeting.

Re Portuguese, etc. Mines, L. R. 45 Ch. D. 16.

A person who commits a trespass on the property of a corporation can not question the regularity of a contract of such corporation, so far as such regularity turns on the action of a directors' meeting, or meeting of an executive committee, or assent of three fifths of the stockholders, as required by statute.

Farnsworth vs. Western, etc. Co., 6 N. Y. Supp. 735.

"The evidence that a day was fixed by common consent is sufficient to show notice to all of the meetings on that day."

"It was wholly immaterial in what way the day of the regular meetings was fixed."

Atlantic, etc. Ins. Co. vs. Sanders, 36 N. H. 252, 269.

In a case where directors were empowered to meet once a week at their office, without notice or summons, but on such day and at such hour as they should from time to time agree upon, it was held that a resolution come to by a quorum assembled without notice was invalid, inasmuch as no day or hour for the meeting of the directors had ever been fixed.

Moore vs. Hammond, 6 B. & C. 456.

If the board meeting be especially convened, the general rule is that notice must be served upon every member entitled to be present.

Pike County vs. Rowland, 94 Pa. St. 238.

Mandamus lies to compel vestrymen to attend a meeting when by reason of dissensions they decline to do so.

People vs. Winans, 9 N. Y. Supp. 249.

Notice to all is necessary, although a quorum is present.

Johnston vs. Jones, 23 N. J. Eq. 216, where the meeting was for the purpose of calling a stockholders' meeting. Concerning the difference between the position of municipal corporation officials and the officers of a private corporation, see Wallace vs. Walsh, 125 N. Y. 26, 36.

A recess may be taken by a board without formal action, and two meetings on the same day may be construed as one meeting with a recess.

State vs. Powell, 70 N. W. Rep. 592 (Iowa).

Notice should contain specifically the time, place, and business to be transacted and be given a reasonable time before the hour of meeting.

Re Argus Co., 138 N. Y. 557.

Notice of directors' meeting given on the same day is insufficient. The court said:—

"Prima facie this was not a reasonable time. The managers are all reported as business men, who can not be presumed to be ready to drop their own affairs and attend off-hand on such a notice. One full day in advance of the time fixed is as little as the law could presume to be reasonable, and in many cases that would be too short."

Mercantile Library Co. vs. Pittsburgh Library Assoc., 173 Pa. St. 30; Re Homer, etc. Mines, L. R. 39 Ch. D. 546; Corbett vs. Woodward, 5 Sawyer 403; Williams vs. German, etc. Ins. Co., 68 Ill. 387; People vs. Albany Med. Coll., 26 Hun. 348; aff'd, 89 N. Y. 635; Covert vs. Rogers, 38 Mich. 363; Chase vs. Tuttle, 55 Conn. 455.

It is immaterial, however, whether the purpose of the meeting is stated, unless it is required by the by-laws. When a meeting is called, if the purpose is not stated, it will be understood that the meeting will transact any business and consider any matter pertaining to the affairs of the corporation that may come before it.

In re Argus Co., 138 N. Y. 557; 34 N. E. 388, 394.

In the absence of any evidence to the contrary, it will be presumed that all of the directors had notice.

Sargent vs. Webster, 13 Metc. (Mass.) 497; Leavitt vs. Mining Co., 3 Utah 265; 1 Pac. 365; Chase vs. Tuttle, 55 Conn. 455; 12 Atl. 874.

§ 172. Quorum Directors.

Where a quorum of the board of directors is stated in the charter, and such a number is given power to transact the

business of the corporation, the unanimous concurrence of that number at a casual meeting and without notice to the others will be sufficient to bind the corporation, unless notice is expressly required by the charter or by-laws.

Edgerly vs. Emmerson, 23 N. H. 555; State vs. Smith, 48 Vt. 266; Chase vs. Tuttle, 55 Conn. 455; 12 Atl. 874.

Otherwise all the members of the board of directors must have notice of the proposed meeting unless it is a regular meeting of which he should know and at which it is his duty to be present.

Dispatch Line of Packets vs. Bellamy Mfg. Co., 12 N. H. 205.

If, however, all the directors are present and transact a given piece of business, it matters not whether it was a general or special meeting, it will bind the company and is immaterial whether notice was required by the by-laws or not.

Minneapolis Times Co. vs. Nimocks, 53 Minn. 381; 55 N. W. 546.

The board of directors, unlike the stockholders, require a majority of their number to constitute a quorum.

Sargent vs. Webster, 13 Metc. (Mass.) 497.

A less number of the board of directors have but one power, and that is to adjourn. A majority will constitute a quorum unless more are expressly required.

Sargent vs. Webster, *supra*; Leavitt vs. Mining Co., 3 Utah 265; 1 Pac. 356.

A majority of the board of directors will constitute a quorum, and a majority of the quorum will be sufficient to transact any business and decide any question upon which the board may lawfully enter.

Sargent vs. Webster, 13 Metc. (Mass.) 497; Buell vs. Buckingham, 16 Iowa 284; Leavitt vs. Mining Co., 3 Utah 265; 1 Pac. 356.

Many attempts have been made to sustain a vote of the board of directors acting in a separate and integral capacity, but it is now well settled that the board of directors must

act as a board, a majority must be present, and the opportunity given to confer and exchange ideas. They can not vote or act in any other manner or capacity and bind the corporation.

Tradesman Pub. Co. vs. Knoxville Car Wheel Co., 95 Tenn. 634.

The verbal assent of directors to the execution of a mortgage is not good.

Alta Silver Min. Co. vs. Alta Placer Min. Co., 78 Cal. 629.

Where the directors own all the stock of a corporation, they may authorize its president to sell its assets, and the fact that the authority was not given at a regular directors' meeting is immaterial.

Jordan vs. Collins, 107 Ala. 572.

A mere street conversation between the directors, by which they "agree" that the subscriptions shall be called, is not a sufficient call.

Branch vs. Augusta Glass Works, 95 Ga. 573.

A separate assent of a township committee to the construction of a street railway is illegal.

West Jersey Traction Co. vs. Camden Horse R. R., 53 N. J. Eq. 163.

Separate action of the directors without a meeting is not good.

Limer vs. Traders' Co., 28 S. E. Rep. 730 W. Va.

Separate acquiescence of the directors is not sufficient.

Sanderson vs. Tinkham, etc. Co., 83 Iowa 446.

The directors of a religious corporation can not act as a board by the separate assents of the members to the act in question.

Columbia Bank vs. Gospel Tabernacle, 127 N. Y. 361.

The separate assent of the directors to a mortgage is not good.

Duke vs. Markham, 105 N. C. 131.

Directors can act in behalf of the corporation only as a board. Their power is not joint and several, but joint only.

Buttrick vs. Nashua, etc. R. R., 62 N. H. 413.

Directors can not act except as a board.

North Hudson, etc. Assoc. vs. Childs, 82 Wis. 460.

Directors can act as such in meeting only. Their individual assent is not sufficient.

State vs. People's, etc. Assoc., 42 Ohio St. 579; Junction R. R. vs. Reeve, 15 Ind. 236; Stoystown, etc. Turnp. Co. vs. Craver, 45 Pa. St. 386.

A bargain and sale deed of corporate property, authorized and executed separately and singly by all the directors without a board meeting, is void.

Baldwin vs. Canfield, 26 Minn. 43; Gashwiler vs. Willis, 33 Cal. 11.

Separate and single consent of a quorum of directors to the secretary's execution of a bond is void.

D'Archy vs. Tamar, etc. Ry., L. R. 2 Exch. 158.

The assent of a mere majority of the board, given singly and separately, gives no authority to a cashier to do an act outside of his customary duties.

Elliot vs. Abbot, 12 N. H. 549.

Where a mortgage is executed by order of directors assenting apart and not in a meeting, and is executed by a president and secretary who were elected by the stockholders at a meeting not properly called, the stockholders having no power to elect such officers in any case, the mortgage is not good.

Re St. Helen Mill Co., 3 Sawy. 88.

A pledge of corporate securities to raise money is legal where six of the eight directors consented, even though no meeting was held.

Hubbard vs. Camperdown Mills, 26 S. C. 581.

Directors may bind the corporation by their separate ap-

proval of claims when they have been accustomed to do so.
Longmont, etc. Co. vs. Coffman, 11 Col. 551.

The separate assent of the board of trustees of a religious corporation to the execution of a note is void. They must meet.

People's Bank vs. St. Anthony's, etc. Church, 109 N. Y. 512.

An assignment for the benefit of creditors authorized by the directors acting separately and not as a board is invalid.

Calumet Paper Co. vs. Haskell, etc. Co., 45 S. W. Rep. 1115 Mo.

Where an officer is sued for malfeasance in office, it is no defense that his acts were authorized by directors who did not meet as a board, but separately and singly assented to acts. Directors bind the corporation by their votes only when they meet as a board.

"The law proceeds upon the theory that the directors shall meet and counsel with each other, and that any determination affecting the corporation, shall only be arrived at and expressed after a consultation at a meeting of the board attended by at least a majority of its members."

National Bank vs. Drake, 35 Kan. 576.

A tax which is assessed by two trustees in meeting assembled, who then obtain the separate and private assent of the third trustee, is void.

Keeler vs. Frost, 22 Barb 400; Schumm vs. Seymour, 24 N. J. Eq. 143.

The members of a board of highway commissioners can not authorize or ratify a contract by separate approval. A meeting is necessary.

Taymouth vs. Koehler, 35 Mich. 22.

The majority of a school-board can not act separately and singly, no meeting being held.

Harrington vs. District, etc., 47 Iowa 11.

The separate consent of three directors was held not good in Bosanquet vs. Shortridge, 4 Exch. 699.

A due-bill running from the corporation to a person and signed by the directors can not be defeated by showing that the directors did not meet, but signed it separately and singly.

Sampson vs. Bowdoinham, etc. Corp., 36 Me. 78; Collin's Claim, L. R. 12 Eq. 246.

The execution of a replevin bond by the president for the corporation is legal, a majority of the directors singly and separately assenting thereto.

Bank of Middlebury vs. Rutland, etc. R. R., 30 Vt. 159, where Redfield, Ch. J., said:—

"The cases are numerous where the consent of a majority of the directors given separately has been held binding upon the company."

Probably in these last cases the contract would have been binding, even if the directors had not acted at all. See also Cammeyer vs. United, etc. Churches, 2 Sandf. Ch. 186, 229, holding that the trustees must meet in order to act, and that their affirmative vote in a stockholders' or general assemblage is not sufficient. Collective action as a board, and not individual action as a member of the board, is necessary to bind the corporation.

Alleghany County Workhouse vs. Moore, 95 Pa. St. 408; Twelfth St. Market Co. vs. Jackson, 103 Pa. St. 273.

Where there are but two stockholders, and they are directors, and no directors' or stockholders' meeting has been held since the organization meeting, and these two have carried on the business as though it was a partnership concern, a bona fide assignment by these two persons in the name of the corporation to secure preferred creditors of the corporation is good, although no corporate seal was used and no meetings were held authorizing the act.

Teitig vs. Boseman, 12 Mont. 404.

When all the officers assent to a money obligation being given in the corporate name by the chief officer, the prioress, the educational corporation is bound.

Louisville, etc. R. R. vs. St. Rose Literary Soc., 91 Ky. 395.

See also *Re Great Northern, etc. Works*, L. R. 44 Ch. D. 472, drawing a distinction where all of the directors assent. Directors can not act singly.

Morrison vs. Wilder Gas C., 40 Atl. Rep. 542 Me.

Where some of the directors agree privately among themselves to pay for certain things needed by the corporation, and the latter uses them, they alone are liable for the price thereof.

Lyndon, etc. Co. vs. Lyndon, etc. Inst., 22 Atl. Rep. 575 Me.

Directors have no power to act by proxy; this is an authority that belongs to the stockholders only.

Perry vs. Tuscaloosa, etc. Co., 93 Ala. 364; *Craig Medicine Co. vs. Merchants' Bank*, 59 Hun. 561; *Re Portuguese, etc. Co.*, L. R. 42 Ch. D. 160; *McLaren vs. Fiskien*, 28 Grant, Ch. (Can.) 352; *Attorney-General vs. Scott*, 1 Vesey 413; *Dudley vs. Kentucky High School*, 9 Bush (Ky.) 576.

Where a notice of the time, place, and purpose of the meeting is given and a majority of the board appears, a majority of that majority of the board may bind the corporation.

Wells vs. Railway, etc. Co., 19 N. J. Eq. 402; *Cram vs. Bangor, etc.*, 12 Me. 354; *Cahill vs. Kalamazoo, etc. Ins. Co.*, 2 Doug. (Mich.) 124; *Ex parte Willcocks*, 7 Cow. 402; *People vs. Walker*, 2 Abb. Pr. 421; *Sargent vs. Webster*, 54 Mass. 497.

If only a minority of the board are present, the acts are not valid.

Lockwood vs. Mechanics' Nat. Bank, 9 R. I. 308; *Ernest vs. Nicholls*, 6 H. L. Cas. 401, 417; *Price vs. Grand, etc. R. R.*, 13 Ind. 58; *Ridley vs. Plymouth, etc. Co.*, 2 Exch. 711.

A director who is present but does not vote is counted in the negative.

Commonwealth vs. Wickersham, 66 Pa. St. 134.

The majority of a board of directors constitute a quorum, and a majority of the quorum decide the action of the board.

Leavitt vs. Oxford, etc. Co., 3 Utah 265.

A majority of a quorum of directors bind the corporation.

Buell vs. Buckingham, 16 Iowa 284.

Where the charter says five shall constitute a quorum of directors, a mortgage executed under the authority of a directors' meeting when only four are present is void.

Holcomb vs. Bridge Co., 9 N. J. Eq. 457.

A quorum of the directors is presumed to have been present.

Sargent vs. Webster, 54 Mass. 497.

A majority of the trustees are necessary to constitute a quorum.

State vs. Porter, 113 Ind. 79.

A by-law can not authorize less than a majority to act when the charter requires a majority.

State vs. Curtis, 9 Nev. 325.

A by-law of the corporation authorizing a quorum of five directors, with the president, to transact ordinary business, is valid, though there are twenty-three directors.

Hoyt vs. Thompson, 19 N.Y. 207.

Where by resolution of the board four constitute a quorum, an act at a board of three is not binding.

Ducarry vs. Gill, 4 Car. & P. 121.

Where there are eight vestrymen and the statute requires five to constitute a quorum, four can not act, although there are three vacancies in the board.

Moore vs. Rector, etc. 4 Abb. N. Cas. 51.

When the presence of the president is by law necessary to the meeting of an executive committee, a meeting without him can not bind the corporation.

Corn Exch. Bank vs. Cumberland Coal Co., 1 BOsw. 436.

Where two out of six directors have been accustomed to act as a quorum, a forfeiture of stock by two is legal.

Lyster's Case, L. R. 4 Eq. 233.

The acts of less than a quorum are valid if they are subsequently ratified by a quorum.

Austin's Case, 24 L. T. Rep. (N. S.) 932.

A lease taken by a meeting of a board of directors at which no quorum was present is ratified by the acquiescence of two boards elected in subsequent years, with knowledge and no objection.

Oregon Ry. vs. Oregon Ry. & Nav. Co., 28 Fed. Rep. 505.

"Where there is a definite body in a corporation, a majority of that definite body must not only exist at the time when any act is to be done by them, but a majority of that body must attend the assembly where such act is done."

Rex. vs. Miller, 6 T. R. 268, per Lord Kenyon.

A custom is legal which allows three to constitute a quorum of a board of nine directors.

Re Regents', etc. Co., W. N. 1867, p. 79.

An allotment of shares by a board of two when the statute requires three invalid. The subscription is not collectible.

Re British, etc. Co., 59 L. T. Rep. 291.

Where the charter makes a majority of directors a quorum, a minority can not fill a vacancy in the board.

State vs. Curtis, 9 Nev. 325.

Although a meeting of directors is legally called, yet, if a quorum does not attend, those who do attend can not adjourn to another day. It requires a quorum to adjourn.

McLaren vs. Fiskien, 28 Grant, Ch. (Can.) 352.

A managing committee of eight can not act at a meeting of six only.

Brown vs. Andrew, 13 Jur. 938.

A quorum of the directors must be present to act, and this quorum consists of a majority.

Craig Medicine Co. vs. Merchants' Bank, 59 Hun. 561.

In a municipal corporation, if all the board are present and four vote one way, while the other four do not vote at all, the vote prevails. It is a majority of a quorum.

State vs. Dillon, 125 Ind. 136.

Where the record shows that two of the four directors present voted aye and one nay, and the other director was in the chair, and the motion was declared carried, the law presumes that the chairman voted aye.

Rollins vs. Shaver, etc. Co., 80 Iowa 380.

If all six members of a city council are present, three may pass a resolution, although the other three do not vote.

Rushville Gas Co. vs. Rushville, 121 Ind. 206.

A director who is chosen by the board when less than a quorum is present may be treated as not a director, even though he has met with the board frequently when the board was present. His remedy is not mandamus.

People vs. New York, etc. Asylum, 7 N. Y. St. Rep. 277.

A meeting of four legally elected and three illegally elected directors of a corporation is not such a meeting as sustains an action for salary by the president who was elected by them.

Waterman vs. Chicago, etc. R. R., 139 Ill. 638.

The confirmation by the board of directors of resolutions passed by a meeting not containing a quorum relates back, and is as if the resolutions were regularly passed in the first place.

Re Portuguese, etc. Mines, L. R. 45 Ch. D. 16.

Two directors can not transact business when there are four directors.

Re Portuguese, etc. Co., L. R. 42 Ch. D. 160.

A by-law may make five a quorum out of twenty-three directors where the statute is silent on the subject.

Hoyt vs. Sheldon, 3 Bosw. 267.

In an action by an insurance company to collect an assessment, it is no defense that losses were allowed at meetings of the directors where no quorum was present.

Atlantic, etc. Ins. Co. vs. Sanders, 36 N. H. 252, 269.

The majority of the quorum may decide a question and a plurality may elect any officer, unless otherwise provided by charter or by-laws or law.

Ex parte Willocks, 7 Cow. 410; Cooley, Const. Lim. (4th Ed) 141; Oldknow vs. Wainright, 2 Burr. 1017; Booker vs. Young, 12 Gratt. (Va.) 303.

Where twelve were present, and one candidate receives six votes, another four, and another one, and one blank, there is no election.

People vs. Conklin, 7 Hun. 188.

The president of the board may cast the deciding vote where there is a tie, but not so if he has already cast his vote once. A by-law can not give him this right.

State vs. Curtis, 9 Nev. 325.

The president does not have, in addition to his first vote, a casting vote as president.

Toronto, etc. Co. vs. Blake, 2 Ont. (Can.) 175.

A director is unlike a stockholder in that he is disqualified to vote upon any resolution in which he is personally interested.

"All the authorities agree that it is essential that the majority of the quorum of a board of directors shall be disinterested in respect to the matters voted upon."

Miner vs. Ice Co., 93 Mich. 97; 53 N. W. 218; Smith vs. Association, 78 Cal. 289; 20 Pac. 677; Copeland vs. Manufacturing Co., 47 Hun. (N. Y.) 235.

§ 173. Evidence of the Meetings of the Board of Directors.

The minute-book of the meetings of the board is the best evidence to prove contracts or acts of agents acting upon the authority of the corporation.

Where the appointment of an agent is by resolution of the directors, or in any other manner requiring a record of the matter, the entry upon the minutes or books of the corporation may be introduced in evidence of the appointment.

Buncombe Turnp. Co. vs. McCarson, 1 Dev. & B. (N. C.) 306; Owings vs. Speed, 5 Wheat. 420, 424; Thayer vs. Middlesex Ins. Co., 27 Mass. 326; Narragansett Bank

vs. Atlantic Silk Co., 44 Mass. 282; Clark vs. Farmers' Mfg. Co., 15 Wend. 256; Methodist Chapel vs. Hernick, 25 Me. 354; Haven vs. New Hampshire Asylum, 13 N. H. 532.

Where a corporate agent is appointed by a resolution, his authority can not be proved by parol. The extent of the authority in such a case is a question of law for the court.

McCreery vs. Garvin, 39 S. C. 375.

In order to make the corporate books admissible, proof must be given as to who kept them, and that the entries were made at the proper time or by the proper directors, and that the entries were properly made.

Powell vs. Conover, 75 Hun. 11.

A contract duly accepted and agreed to in a directors' meeting and entered on the minutes, which are duly signed, is a contract in writing.

Texas, etc. Ry. vs. Gentry, 69 Tex. 625.

An entry on the corporate minutes of a resolution to form a corporation contract is sufficient on notice of the same to the other party and suffices to form the contract. It satisfies the statute of frauds.

Argus Co. vs. Mayor, etc., 55 N. Y. 495.

An entry on the directors' minute-book, duly signed, is sufficient to prevent a contract being void by the statute of frauds.

Jones vs. Victoria, etc. Co., L. R. 2 Q. B. D. 314.

Directors' minutes are evidence of a contract, though written up after the meeting.

Wells vs. Railway, etc. Co., 19 N. J. Eq. 402.

A person purchasing a mortgage from a savings bank through its treasurer and secretary may rely upon a copy of a resolution passed by the trustees authorizing such sale, and duly signed by the secretary. So though the secretary had intentionally made the copy different from the original.

Whiting vs. Wellington, 10 Fed. Rep. 810.

In a suit by an employee of a corporation for pay for services, the defendants' books, properly kept by its proper officers, are admissible in evidence to prove payments to plaintiff on account of services.

Ganther vs. Jenks, etc. Co., 76 Mich. 510.

A resolution of the board of directors authorizing an assignment for the benefit of creditors is sufficient.

Tripp vs. Northwestern Nat. Bank, 45 Minn. 383.

The minutes of directors' meetings as they appear in a corporate book will not be excluded as evidence merely because the secretary swears that they were written up several years after the meetings and were made partially from the recollections of the president.

McIlhenny vs. Binz, 80 Tex. 1.

In proving a *de facto* corporation, the meetings and the issue of stock and the transaction of business may be proved by parol without producing the books.

Johnson vs. Schulin, 73 N. W. Rep. 147 (Minn.).

§ 174. Directors Right to Examine Books of Corporation.

The directors or a single director have the right to examine the books of the corporation at all times. This right is absolute.

People vs. Throop, 12 Wend. 181; Charlick vs. Flushing R. R., 10 Abb. Pr. 130; Re Ciancimino, N. Y. L. J., Dec. 23; Cf. State vs. Einstein, 46 N. J. L. 479.

This is true, even though a stockholder is hostile to the corporation.

People vs. Throop, 12 Wend. 181.

The directors' right to examine books of the corporation is analogous to that of the right of the stockholders to examine the books, which right in the stockholders is an absolute right.

"At common law the stockholders of a corporation had the right to examine, at reasonable times, the records and books of the corporation."

Stone vs. Kellogg, 46 N. E. Rep. 222 (Ill.).

Stockholders "have the right, at common law, to examine and inspect all the books and records of the corporation at all seasonable times, and to be thereby informed of the condition of the corporation and its property."

Per Redfield, J. in *Lewis vs. Brainerd*, 53 Vt. 519.

In *Commonwealth vs. Phoenix Iron Co.*, 105 Pa. St. 111, the court said:—

"In the absence of agreement, every shareholder has the right to inspect the accounts,—a right subject to the necessities of the company, yet existing. . . . The doctrine of the law is that the books and papers of the corporation, though of necessity kept in some one hand, are the common property of all the stockholders."

The right exists, although "its exercise be inconvenient to the bookkeepers and managers of the partnership business."

In *Huylar vs. Cragin Cattle Co.*, 40 N. J. Eq. 392, the court said:—

"Stockholders are entitled to inspect the books of the company for proper purposes at proper times, . . . and they are entitled to such inspection, though their only object is to ascertain whether their affairs have been properly conducted by the directors or managers. Such a right is necessary to their protection."

Deaderick vs. Wilson, 8 Baxt. (Tenn.) 108.

"The minority stockholder should have the right to require a statement from the company."

Sage vs. Culver, 71 Hun. 42.

A stockholder is not entitled as a matter of right to inspect the stock-book or other books of the bank. The court will not, although it has the power, grant a mandamus for the inspection of the stock-book or other books of the bank, unless some special grounds be disclosed to warrant it.

Re Bank of Upper Canada vs. Baldwin, 1 Draper (K. B. Can.) 55.

A stockholder in a New York corporation has a common-law right to examine the books and papers of the corporation where a proposition has been made for the purchase of all

the stock of the company and the dividends have been greatly reduced.

Re Application of Steinway, 31 N. Y. App. Div. 70.

Mr. Simon Stern, in the *Cyclopedia of Political Science, Political Economy, and United States History*, vol. 3, p. 526, says:—

"Another problem presented by the existing condition of the railways in the United States is that which arises from the secrecy of management. This evil must be dealt with radically. One of the prime motives for secrecy of management is the enormous advantage which at the present day it gives to the managers in the maintenance of their power. They alone know where the stockholders are to be found, and can therefore control votes by the knowledge of how to reach or buy them, thus perpetuating their control. Another motive is the advantage thus afforded for stock speculations. The board of managers, by keeping unto themselves the knowledge that their property is losing heavily in comparative traffic, can sell their own holdings and go short of the market under circumstances which will yield them an absolute certainty of profit of the transaction. This gives them an enormous advantage over the community by depleting the pockets of the unwary, who find themselves saddled with stock at high prices, bought months in advance of the public announcement that the road is in difficulties. The knowledge of rapid gains in the development of business likewise gives, so long as it can be kept secret, a like advantage in purchase of stock. This advantage has been exploited to such a degree in the United States that the investing public has become inspired with a general distrust for railroad stock investment."

If this right is refused in either case, the remedy is by writ of mandamus.

"It would seem from the weight of authority and in reason that a shareholder is entitled to mandamus to compel the custos of corporate documents to allow him an inspection, and copies of them, at reasonable times, for a specific and proper purpose, upon showing a refusal on the part of the custos to allow it, and not otherwise."

Commonwealth vs. Phoenix Iron Co., 105 Pa. St. 111.

Phoenix Iron Co. vs. Commonwealth, 113 Pa. St. 563, explaining the method of procedure, and holding that the ap-

plicant need not apply to a court of equity. The old rule that mandamus will issue only for a public purpose is no longer a rule of law so as to prevent its use herein.

Commonwealth, etc., supra, questioning *Rex vs. Bank of England*, 2 B. & Ald. 620; *Rex vs. England Assur. Co.*, 5 B. & Ald. 899; *Rex vs. Clear*, 4 Barn. & C. 899; *Foster vs. White*, 86 Ala. 467.

Where it is provided by statute that a stockholder has the right to examine the books of the corporation, mandamus is granted as a matter of right.

Where a statute gives the right to inspect, this right may be enforced by mandamus.

Coquard vs. National, etc. Co., 49 N. E. Rep. 563 (Ill.).

A statute giving the right to examine the books and records gives the right to examine contracts, and this right may be enforced by mandamus.

Stone vs. Kellogg, 46 Rep. 222 N. E. (Ill.).

Mandamus lies at the instance of a stockholder to compel his corporation to allow him to inspect the books of the company relative to the stock in accordance with the constitution of Louisiana, the object of the stockholder being to ascertain the value of the stock and to guide his future action in regard thereto.

State vs. New Orleans, etc. Co., 22 S. Rep. 815 (La.).

Under the Wisconsin statute authorizing the stockholder to examine the stock-books and accounts, a mandamus may be issued to the officer having the books in charge.

State vs. Bergenthal, 72 Wis. 314.

Under a constitution right to see the list of stockholders, a stockholder has no absolute right to take a list of them.

Commonwealth vs. Empire Pass. Ry., 134 Pa. St. 237.

Mandamus lies to enforce the statutory right of inspection.

People vs. Pacific Mail S. S. Co., 50 Barb. 280.

Mandamus lies to compel the resident agent of a foreign

corporation to open its transfer books to a stockholder as required by statute.

People vs. Paton, 20 Abb. N. Cas. 195.

Mandamus will lie in behalf of the wife of a deceased stockholder, who holds the certificates made out in his name, to compel the corporation to allow her to examine the transfer books in order that she may vote intelligently at a coming election.

People vs. Eadie, 63 Hun. 320.

Mandamus lies to open for inspection of a stockholder and for taking memoranda therefrom such corporate books as the statute prescribes shall be open to him.

Re Martin, 62 Hun. 557.

Mandamus lies to allow inspection as required by the statute, and the fact that the applicant holds a certificate of stock is sufficient.

Martin vs. Johnston Co., 25 Abb. N. Cas. 350.

Where there is a State statute allowing stockholders to examine the corporate books, a national bank in the State is subject thereto and mandamus will issue.

Winter vs. Baldwin, 89 Ala. 483.

Under a statute to the effect that "the stockholders of all private corporations have the right of access to, inspection, and examination of the books, records, and papers of the corporation, at reasonable and proper times," a stockholder has the "right to examine the books at any and all reasonable times," and "when this right is claimed and refused, he is entitled to a mandamus on the averment that he is a stockholder of the corporation; that he has demanded the right of inspection; that the time was reasonable and proper; and that the right was denied him." He may make the examination through an agent.

Foster vs. White, 86 Ala. 467.

Concerning the New York act requiring resident transfer agents of foreign corporations to exhibit to stockholders the

transfer book and a list of stockholders, and concerning an alternative writ of mandamus therein, see—

People vs. Crawford, 68 Hun. 547.

Mandamus lies to compel corporate officers to exhibit to a stockholder the books specified in the statute giving this right.

Ellsworth vs. Dorwart, 95 Iowa 108.

A corporation may make any sealed obligation without a formal vote or written entry of vote by the directors.

Zihlman vs. Cumberland Glass Co., 74 Md. 303.

“The entry of a resolution in a minute is not essential to the validity of the resolution, which is proved *aliunde*.”

Re Great Northern, etc. Works, L. R. 44 Ch. D. 472;
Bank of Yolo vs. Weaver, 31 Pac. Rep. 160 (Cal.).

“Parol evidence is admissible to prove the action of the board of directors or stockholders where the record fails to state it.”

Allis vs. Jones, 45 Fed. Rep. 148.

“Where a corporation consists of a small number of persons, like a partnership, they may transact all their business by conversation, without formal votes, and it would be a violation of the plainest principles of justice to hold those who deal with them to prove all their acts by written votes, which they do not keep or do not produce.”

Melledge vs. Boston, etc. Co., 59 Mass. 158, 179; Pickett vs. Abney, 84 Tex. 65; Sears vs. King's, etc. R. R., 152 Mass. 151; U. S. Bank vs. Danbridge, 12 Wheat, 64, 95; Union Bank vs. Ridgely, 1 Har. & G. (Md.) 324, 425; St. Mary's Church vs. Cagger, 6 Barb. 576; Maxwell vs. Dulwich College, 1 Fonbl. Eq. 296; Magill vs. Kaufman, 4 Serg. & R. (Pa.) 317; Brady vs. Brooklyn, 1 Barb. 584; Essex Turnp. Corp. vs. Collins, 8 Mass. 292, 298; Marshall vs. Queensborough, 1 Sim. & S. 520; Elysville Mfg. Co. vs. Okisko Co., 1 Md. Ch. 392; Garvey vs. Colcock, 1 Nott. & McC. (S. C.) 231; Bates vs. Bank of Alabama, 2 Ala. 452; Scott vs. Middleton, etc. R. R., 86 N. Y. 200; Tibbals vs. Mount Olympus Water Co., 10 Wash. 329; Outtersen vs. Fonda Lake Paper Co., 20 N. Y. Supp. 980.

Where there are but a few persons interested in a corporation,—

"ordinary business may be transacted without the formality of resolutions. It may be done by conversation without formal votes."

Hall vs. Herter, 83 Hun. 19; Columbia, etc. Co. vs. Vancouver, etc. Co., 52 Pac. Rep. 513 Oreg.; United Growers Co. vs. Eisner, 22 N. Y. App. Div. 1; Rogers vs. Pell, 154 N. Y. 518; Morrill vs. C. T. Segar Mfg. Co., 32 Hun. 543; Contra, Andover, etc. Turnp. Co. vs. Hay, 7 Mass. 102, 107; Garvey vs. Colcock, 1 Nott & McC. (S. C.) 231; Peek vs. Detroit, etc. Works, 29 Mich. 313; but see Taymouth vs. Koehler, 35 Mich. 22; Nashua, etc. R. R. vs. Boston, etc. R. R. 27 Fed. Rep. 821; Moss vs. Averell, 10 N. Y. 449; Baptist House vs. Webb, 66 Me. 398; Wallace vs. First Parish, etc., 109 Mass. 263; Prothro vs. Minden Sem., 2 La. Ann. 939; Preston vs. Missouri, etc. Co., 51 Mo. 43; Edgerly vs. Emerson, 23 N. H. 555; Delano vs. Smith Charities, 138 Mass. 63; Holden vs. Hoyt, 134 Mass. 181; Wood vs. Wiley, etc. Co., 56 Conn. 87; Perkins vs. Washington Ins. Co., 4 Cow. 645; Hoag vs. Lamont, 60 N. Y. 96; Fleckner vs. Bank of U. S., 8 Wheat. 338; Elysville Mfg. Co. vs. Okisko Co., 1 Md. Ch. 392.

The resolution and votes of directors are the best evidence, and should be produced or their absence accounted for, but if no record is made or it is lost or destroyed, secondary evidence is admissible to prove what was done after it is ascertained that the originals are not to be found by an examination of the officers of the corporation.

Mullanphy Sav. Bank vs. Schott, 135 Ill. 635.

Where the non-production of the books is accounted for, the entries may be proved by the clerk, otherwise they should be proved by the entries in the books themselves.

Brower vs. East, etc. Co., 84 Ga. 219.

The books are the best evidence and no testimony otherwise as to what has been seen upon the books is competent.

Dial vs. Valley, etc. Assoc., 29 S. C. 560.

Even a copy of a resolution of a foreign corporation is not evidence until it is shown that at least a reasonable effort has been made to obtain the books of the corporation.

Bowick vs. Miller, 21 Ore. 25.

Sworn copies are not even admissible unless loss of the books is accounted for.

Latourette vs. Clark, 51 N. Y. 639; Hallowell, etc. Bank vs. Hamlin, 14 Mass. 178; First Nat. Bank vs. Tisdale, 84 N. Y. 655; Owings vs. Speed, 5 Wheat. 420; Zalesky vs. Iowa, etc. Co., 70 N. W. Rep. 187 (Iowa); Mandel vs. Swan, etc. Co., 154 Ill. 177; Lowry Banking Co. vs. Empire Lumber Co., 91 Ga. 624; Boggs vs. Lakeport, etc. Assoc., III. Cal. 354; New Boston, etc. Co. vs. Saunders, 34 Atl. Rep. 670 N. H.; Cameron vs. First, etc. Bank, 34 S. W. Rep. 178 (Tex.); Langsdale vs. Bonton, 12 Ind. 467; Bay, etc. Assoc. vs. Williams, 50 Cal. 353; Cornwall, etc. Co. vs. Bennett, 5 H. & N. 423; Thayer vs. Middlesex, etc. Co., 27 Mass. 325; Elems vs. Ogle, 15 Jur. 180; Lohman vs. New York, etc. R. R., 2 Sandf. 39; Narragansett Bank vs. Atlantic Silk Co., 44 Mass. 282; Bangor, etc. R. R. vs. Smith, 47 Me. 34; Haven vs. New Hampshire Asylum, 13 N. H. 532; Clark vs. Farmer's, etc. Co., 15 Wend. 256; Montgomery R. R. vs. Hurst, 9 Ala. 513; Gould vs. Norfolk, etc. Co., 63 Mass. 338; Waters vs. Gilbert, 56 Mass. 27; Van Hook vs. Somerville, etc. Co., 5 N. J. Eq. 137, 169; Boston, etc. Co. vs. Barton, 59 Mass. 158, 179; Smith vs. Natchez, etc. Co., 2 Miss. 479, 492; Highland Turnp. Co. vs. McKean, 10 Johns. 154; Whitman vs. Granite Church, 24 Me. 236; Stebbins vs. Merritt, 64 Mass. 27; Union Bank vs. Knapp, 20 Mass. 96; Chenango, etc. Co. vs. Lewis, 63 Barb. Ill.; Union, etc. Co. vs. Rocky Mountain Nat. Bank, 2 Colo. 565; Gafford vs. American, etc. Co., 77 Iowa 736; Blom vs. Pond's Extract Co., 18 N. Y. Supp. 179.

A resolution may be proved by parol though only the company's memorandum was made of it.

Handley vs. Stutz, 139 U. S. 417; Wiley vs. Athol, 150 Mass. 426.

§ 175. Executive Committee.

The power of directors to delegate authority to subordinate officers to transact business is no longer open question. The power is limited to the radius of the charter and to whether or not the decision would involve the exercise of discretion.

Directors may authorize two of their number to execute corporate notes to a person.

Leavitt vs. Oxford, etc. Co., 3 Utah 265.

Or appoint an agent to execute a deed.

Arms vs. Conant, 36 Vt. 744.

Where various corporations appoint a committee to carry on litigation, they are each liable for the attorney's fees, the attorneys having no knowledge of a limitation of the powers of the committee in the matter.

Prindle vs. Washington L. Ins. Co., 73 Hun. 448.

Directors having power to fix the rates of their railroad may delegate that power to agents.

Manchester, etc. R. R. vs. Fisk, 33 N. H. 297.

The corporation may authorize its president to sell and assign its negotiable paper.

Stevens vs. Hill, 29 Me. 133; Northampton Bank vs. Pepoon, 11 Mass. 288.

Nearly all corporate acts are done by means of subordinate agents. Such delegations of authority are necessary.

Manchester Ry. vs. Fisk, 33 N. H. 297.

Difficulty occurs in defining the line which separates powers that may be delegated from those which may not be.

See Lyon vs. Jerome, 26 Wend. 485; Gillis vs. Bailey, 21 N. H. 149.

A corporation owning the water-works outside of a city may agree to furnish water to one inside the city, the general distribution of the water to be under the joint control of two agents, each corporation appointing one, and the profits to be divided equally.

San Diego Water Co. vs. San Diego Flume Co., 108 Cal. 549.

The directors' duty to pass on paper offered for discount can not be delegated in Louisiana.

Percy vs. Millaudon, 3 La. 568; Cf. Morse, Banks and Banking, 108.

Directors having power to purchase stock can not delegate that power to a general manager. No ratification arises from the fact that the purchase was entered on the books.

Cartmell's Case, L. R. 9 Ch. 691.

Directors can not delegate to two of their number the question of whether a conditional subscription to shares should be accepted.

Howard's Case, L. R. 1 Ch. 561.

Two directors acting as agents to receive calls have no power to waive a forfeiture of stock and receive the calls thereon.

Card vs. Carr, 1 C. B. (N. S.) 197.

Directors can not delegate to a committee the power to forfeit and sell stock for non-payment of calls.

York, etc. R. R. vs. Ritchie, 40 Me. 425.

A Pennsylvania railroad corporation can not authorize its board of directors to delegate to an executive committee the location of the route.

Weidenfeld vs. Sugar, etc. R. R., 48 Fed. Rep. 615.

In Gillis vs. Bailey, 21 N. H. 149, it was held that a board of directors could not delegate to an agent the power to lease various pieces of property owned by the corporation. Power to make assessment can not be delegated by the directors.

Farmers', etc. Ins. Co. vs. Chase, 56 N. H. 341.

Silver Hook Road vs. Greene, 12 R. I. 164, where the delegation was to the treasurer.

But see Read vs. Memphis, etc. Co., 9 Heisk. (Tenn.) 545, where such delegation to the president was upheld.

In Tempel vs. Dodge, 89 Tex. 68, it was held that a corporation had no right to create by its by-laws an executive committee to exercise the power of the board of directors.

An executive committee is a necessary part of the machinery of large corporations. It relieves the board of directors or many minor things that had as well be done by a subordinate officer or officers. It is a clear weight of au-

thority that the executive committee may bind the corporation as effectually as the board of directors.

An executive committee may be appointed under the statutory power of the company "to appoint such subordinate officers and agents as the business of the corporation may require." The executive committee may delegate to one of their number the indorsing of checks, etc.

Sheridan, etc. Light Co. vs. Chatham Nat. Bank, 127 N. Y. 517.

A contract between two railroads, by which one was given the right to run over the tracks of the other, is legal, although it is executed by the authority only of the executive committee and of a meeting of the stockholders, the court saying the determination of the management of the corporate affairs rests with its stockholders, and that the stockholders had the power to authorize the board of directors to delegate the power to the executive committee to do any and all acts which the board itself was authorized to do.

Union, etc. Ry. vs. Chicago, etc. Ry., 163 U. S. 564, 597.

Where by-laws give to the directors the "whole charge and management of the property," and the directors are also authorized to have an executive committee to do any business which the board itself might do, and the board authorizes the executive committee to exercise all the powers of the board when the board is not in session, a contract of the executive committee, ratified at a meeting of the stockholders, to allow another railroad to have the joint use of the company's bridge and terminals, is legal and binding.

Union Pac. Ry vs. Chicago, etc. Ry., 51 Fed. Rep. 309;
Chicago, etc. Ry. vs. Union Pac. Ry., 47 Fed. Rep. 15.

See also Black River Imp. Co. vs. Holway, 85 Wis. 344, and Hoyt vs. Thompson's Executor, 19 N. Y. 207, where the committee consisted of any five or more directors who attended meetings of which notice was given to all.

See Hoyt vs. Sheldon, 3 Bosw. 267.

The right of a board of directors to delegate its powers to

an executive committee was raised but not fully passed upon in *Metropolitan, etc. Co. vs. Domestic, etc. Co.*, 43 N. J. Eq. 626, where it was remarked that the rigidity of the old rule prohibiting such delegation has been somewhat relaxed.

"The managers might, undoubtedly, clothe a committee, in the intervals between the sitting of the board, with all their own authority to conduct the ordinary business of the company."

But it seems that this executive committee can not delegate its power to one of their number.

Olcott vs. Tioga R. R., 27 N. Y. 546, 558.

The by-laws may authorize the directors to delegate their powers to a committee. *Harris' Case*, L. R. 7 Ch. 587, where the committee allotted shares. Directors may delegate to a committee power to sell corporate property, and a mortgage given by the committee is valid. Certainly so where the board of directors subsequently accepted the papers connected with it.

Burrill vs. Nahant Bank, 43 Mass. 163.

In *Andreas vs. Fry*, 45 Pac. Rep. 534 (Cal), the contract of the executive committee authorized to purchase patent-rights was declared legal. The constitution of an incorporated camp-meeting association may authorize an executive committee and give it power to make regulations as to the use of the grounds.

Round Lake Assoc. vs. Kellogg, 141 N. Y. 348.

Where the by-laws authorize the directors to transact business through a committee, that committee may consist of one person.

De Tourine Co., L. R. 25 Ch. D. 118.

An employee of a company who sues for services, under a written contract made with the "Chairman" and "Managing Director," may collect; their authority is presumed as agents or executive committee.

Totterdell vs. Fareham Brick Co., L. R. 1 C. P. 674.

In New York it is clearly held that the directors of a banking or loan and trust company may appoint an executive committee and authorize it to act for the board of directors, and that the acts of this committee are as binding, valid, and effective as though they had been authorized by the board of directors directly.

Palmer vs. Yates, 3 Sandf. 137; Cf. Bank Com'rs vs. Bank of Buffalo, 6 Paige 497.

In Bank of Columbia vs. Paterson's Admr., 7 Cranch 299, the right of the directors to delegate their power to contract to a committee was not questioned. Stockholders can not elect a committee and compel the directors to act with that committee in corporate matters.

Boot, etc. Co. vs. Dunsmore, 60 N. H. 85.

It is fraudulent for an executive committee to vote large compensation to themselves for services as promoters.

Blatchford vs. Ross, 54 Barb. 42.

In St. Louis, etc. Assoc. vs. Augustin, 2 Mo. App. 123, a loan committee contracted for the corporation. Where the executive committee can act only when the president is present, action without his presence is void.

Corn, etc. Bank vs. Cumberland, etc. Co., 1 Bosw. 436.

As to committees of municipal corporations, see Dillon, Mun. Corp., 60, 374. Contracts, etc., by an executive committee have often been recognized as valid.

See Tracy vs. Guthrie, etc. Soc., 47 Iowa 27.

A stockholder's request to such a committee to bring an action to remedy a corporate wrong is sufficient.

Hazard vs. Durant, 11 R. I. 196.

The committee's consent to an arbitration may be ratified by the company.

Freyburg Canal vs. Frye, 5 Me. 38.

Although a contract is irregularly made by the executive committee of a corporation, there being no notice and no

quorum, yet, by accepting the benefits of the contract afterward, the company is bound.

Metropolitan, etc. Co. vs. Domestic, etc. Co., 43 N. J. Eq. 626.

In *Curtiss vs. Leavitt*, 15 N. Y. 1, a finance committee had authorized the issue of bonds. The charter required a resolution of the board of directors. The court held that acquiescence cured the defect. In *Taylor vs. Agriculture Assoc.*, 68 Ala. 229, the executive committee was provided for by the charter. A committee authorized to settle with a person can not also settle with a firm in which he is interested, but the company may ratify.

Merchant's, etc. Co. vs. Rice, 70 Iowa 14.

The acts of the executive committee may be construed to be subject to the approval of the next meeting of the board of directors.

Indianapolis, etc. R. R. vs. Hyde, 122 Ind. 188.

An executive committee having the general direction and superintendence of the affairs of the company have no power to issue stock, the whole capital stock being already issued.

Ryder vs. Bushwick R. R., 134 N. Y. 83.

A person sued on a tort can not raise the objection that the proceedings of an executive committee or board of directors were irregular, or that stockholders did not consent to a contract.

Farnsworth vs. Western, etc. Co., 6 N. Y. Supp. 735;
Black River Imp. Co. vs. Holway, 85 Wis. 344.

A minority have a right to be heard, and the majority can not delegate the power to the committee, and thereby override the right of the minority voice in the affairs of the corporation. As has been said,—

“Even if the minority had a voice given to them, still if there existed a combination among the majority before that voice was heard to overbear it,” the acts of such a body would be illegal.

Great Western Ry. vs. Rushout, 5 De G. & S. N., 290, 310.

Where the power to transact business is delegated to the committee, it is the rule that the majority of the committee will bind the committee or board of directors as well as the corporation, due notice having been given, however, of the time, place, and purpose of the meeting of the committee.

Burleigh vs. Ford, 61 N. H. 360; Metropolitan, etc. Co. vs. Domestic, etc. Co., 43 N. J. Eq. 626; State vs. Jersey City, 27 N. J. L. 493; Junkins vs. Doughty Falls, etc. Dist., 39 Me. 220; McNeil vs. Boston Chamber of Com., 154 Mass. 277; Re Liverpool, etc. Assoc., 62 L. T. Rep. 873; Brown vs. Andrews, 13 Jur. 938; Tracy vs. Guthrie, etc. Soc., 47 Iowa 27; Trott vs. Warren, 11 Me. 227; Maitland's Case, 4 De G., M. & G. 769; Cook vs. Ward, L. R. 2 C. P. D. 225; Lyon vs. Jerome, 26 Wend. 485; Cooper vs. Lampeter, 8 Watts (Pa.) 125.

§ 176. Subordinate Officers.

The officers already elected by the stockholders are the board of directors, and possibly the president, are not the subordinate officers and agents of the corporation that are elected or chosen by the board of directors, for the purpose of attending and carrying out the detail business of the company.

The following list will serve to show the agents usually elected or chosen by the board:—

1. Executive Committee.
2. President.
3. Vice-President.
4. Secretary.
5. Treasurer.
6. Counsel.
7. General Manager.
8. Advisory Board.

§ 177. President.

Every corporation has a president. The president usually has charge of the meetings. He is usually a stockholder and is generally one of the board of directors. His powers and duties are very important, as he is possibly the proper executive officer of the corporation unless he is otherwise directed by the by-laws.

He can perform the routine business of the corporation without authority from the board of directors, but to do extraordinary business the president should be empowered by resolution of the board of directors.

§ 178. President's Order of Business.

The secretary should prepare a general order of business for the president or presiding officer, and may be for a routine work as follows:—

1. Roll call.
2. Proof of due notice of meeting.
3. Disposal of unapproved minutes.
4. Reading and approval of minutes of former meeting.
5. Unfinished business.
6. New business.
7. Adjournment.

§ 179. Secretary.

The secretary is an important officer of the company. He has to do with the records of the company; he keeps the books of the company; he gives notice of the meetings. He takes the minutes of any meeting, and should be a man carefully qualified to keep records, and so preserve the records as to be at all times accessible and handy to any of the stockholders or board of directors.

§ 180. Treasurer.

The treasurer's office is a very responsible office for the reason that he keeps the records of the financial affairs of the company, and in smaller corporations he would be the book-keeper; however, if the company had enough business, he would be at the head of the clerical force that attended to the books. The treasurer has no power to bind the company to a contract unless specially authorized by the board of directors or by custom or practice, and if he has charge of large amounts of money, he should be required to give bond for the faithful performance of his duty and the safe keeping of the funds of the company, otherwise the company might find

its funds dissipated without any adequate or possible means of recovery.

§ 181. Counsel.

The employment and duties of the counsel of the company, which is usually a qualified attorney-at-law, are within the scope of the board of directors. He carries on what litigation they authorize him to undertake, and carries out whatever they empower him to do. His most useful duty is to advise the other officers of the company so as to avoid litigation and complications that otherwise they might be led into. He is paid usually by an annual fee or salary, or he may be paid by retainer for each case, and they have whatever services thereafter he performs in the various litigation he may be called upon to attend to, and otherwise than that, a consultation fee will be provided for him.

§ 182. General Manager.

The general manager of the company or its general managing agent may, in ordinary corporations, be the president or any other officer of the company. In larger corporations, his functions are distinct from any other officer. He is in no sense a responsible officer like the president, secretary, or treasurer. He has no concern of the corporate affairs or finances. He simply attends to its ordinary business just the same as if he were working for a partnership or for any ordinary business or for himself. His line of work and the scope of the business entrusted to him will be limited to the transaction of the particular business in which the company is engaged and carrying out a routine business, and as such he can make any contract in the routine business. He would report to his superior officer, possibly the president, and unless required to do so, he would not report to any other official; the board of directors, however, may call upon him to report. He should be skilled in the particular business of the corporation and be able and efficient, because to his skill largely, or to a great extent, would depend the success of the routine business of the company.

§ 183. Advisory Board.

The advisory board would never be necessary unless the company should be a large corporation and have a very extended business, and in that case, an advisory board would possibly be useful, for their duty would be to advise the board of directors in matters of grave importance concerning the interests of the company and advise the board of directors of plans and particulars as to how the difficult features of the company's transactions should be carried out. They are chosen from the stockholders, if selected at all. Small corporations do not need them.

It will be within the scope of this work to devote a chapter to each one of the above officers and follow in detail their various duties, powers, and the extent of the liabilities to which they may subject the company, and hence the matters above mentioned are mere suggestions to enable the incorporators to give the different subjects such consideration as they see proper.

The minutes of the secretary can cover each topic here referred to, in concise language stating simply what was done. This will make all the record necessary for future use.

§ 184. President.

The president of a corporation has very little more power than any other officer of the corporation. He has no power to buy, sell, or contract for the corporation, nor to control its property, its funds, or its management. He may be authorized to contract by a board of directors, or it may be customary for him to contract, or his contracts may be ratified when they have been made, but he can not act in any greater capacity by authority of his being the president than any other director.

"In the absence of anything in the act of incorporation bestowing special power upon the president, he has from his

mere official station no more control over the corporate property and funds than any other director."

Titus vs. Cairo, etc. R. R., 37 N. J. L. 98.

The president has no authority to direct the treasurer to refuse to receive payments of subscriptions.

Potts vs. Wallace, 146 U. S. 689.

The president has no power to employ an architect to prepare plans, and the company is not liable therefor.

Wait vs. Nashua, etc. Assoc., 23 Atl. Rep. 77 N. H.

A president has no inherent power to execute a mortgage.
Alta Silver Min. Co. vs. Alta Placer Min. Co., 78 Cal. 629.

The president has no implied power to mortgage the corporate property.

National State Bank vs. Vigo, etc. Bank, 141 Ind. 352.

The president has no power to mortgage, even though he has been given power to pledge notes and contracts.

Currie vs. Bowman, 25 Oreg. 364.

The president has no inherent authority.

Brush, etc. Co. vs. City, etc. Montgomery, 21 S. Rep. 960 Ala.

The president has no authority to increase the price of construction work.

Grant vs. Duluth, etc. Ry., 69 N. W. Rep. 23 (Minn.).

The president and secretary have no inherent power to execute notes in the name of the corporation.

Estes vs. German Nat. Bank, 62 Ark. 7.

The president has no power to assign a patent-right belonging to the company to pay a corporate debt, where there is no meeting of the board of directors to authorize the same.

Kansas, etc. Co. vs. Devol, 72 Fed. Rep. 717.

The president has no power to confess judgment for the corporation.

Raub vs. Blairstown Creamery Assoc., 56 N. J. L. 262.

A president and secretary have no implied power to give a corporate note.

Edwards vs. Carson Water Co., 21 Nev. 469.

The president can not bind the corporation by his agreement that it will pay the debts of a person.

Hamilton vs. Bates, 35 Pac. Rep. 304 (Cal.).

The president has no power to sell treasury stock.

Re Utica, etc. Co., 154 N. Y. 268.

In Powers vs. Schlicht, etc. Co., 23 N. Y. App. Div. 380, the court stated that the president of a business corporation has implied power to make contracts in its behalf. The president of a railroad company has no inherent authority to negotiate a loan of \$150,000, and agree to pay ten per cent. thereof as brokerage.

Tobin vs. Roaring, etc. R. R., 86 Fed. Rep. 1020.

The fact that a person buying land is president of a company and gives a draft on the company in part payment does not make it a purchase by the company for which it is liable.

Re Seymour, 83 Mich. 496.

The president of a literary and Biblical institution has no power to buy lumber for it, and it is not liable therefor, although it has used it, where some of the directors had agreed among themselves to pay for the lumber.

Lyndon Mill Co. vs. Lyndon, etc. inst., 22 Atl. Rep. 575 (Vt.).

A president of a bank can not agree that sureties on paper given to the bank will not be held liable.

First Nat. Bank vs. Bennett, 33 Mich. 520.

"It is not within the authority of a president of a bank, when he discounts paper for the bank, to promise the maker that he need not pay it."

First Nat. Bank vs. Tisdale, 18 Hun. 151; aff'd, 84 N. Y. 655.

The president can not borrow money for the company unless the charter or the board of directors authorizes him.

Life & F. Ins. Co. vs. Mechanics' F. Ins. Co., 7 Wend. 31.

The president has some power, however. He may employ counsel for the company and prosecute or defend actions in court.

American Ins. Co. vs. Oakley, 9 Paige 496; Mumford vs. Hawkins, 5 Denio 355; Potter vs. New York Inf. Asylum, 44 Hun. 367.

He may also employ special counsel.

Davis vs. Memphis, etc. Ry., 22 Fed. Rep. 883; Recamier Mfg. Co. vs. Seymour, 5 N. Y. Supp. 648, holding that he may do so, though the suit is by the corporation against the board for fraud.

Contra, Bright vs. Metairie Cem. Assoc., 33 La. Ann. 58.

The president may bring a writ of entry to foreclose a mortgage.

Smith Charities vs. Connolly, 157 Mass. 272.

The president can not authorize an attorney to accept service where the board of directors were accustomed to vote on the employment of attorneys.

Bridgeport Sav. Bank vs. Eldredge, 28 Conn. 556.

The president and secretary authorized to execute a mortgage have no authority to insert a provision to pay the attorney fee in case of foreclosure. Ratification of the mortgage by the directors without knowledge of such provision is not ratification thereof.

Pacific, etc. Mill vs. Dayton, etc. Ry., 5 Fed. Rep. 852.

The case of Ashuelot, etc. Co. vs. Marsh, 55 Mass. 507, holds that the president can not cause an action to be commenced. Where the president is dead, the vice-president may employ an attorney.

Coleman vs. West, etc. Co., 25 W. Va. 148.

A hold-over president and manager for sixteen years may institute a suit in behalf of the corporation.

Lucky Queen Min. Co. vs. Abraham, 26 Oreg. 282.

The president and general manager may engage an attorney to give advice in company's matters.

Dallas, etc. Co. vs. Crawford, 44 S. W. Rep. 875 (Tex.).

A bank president has no power to employ an attorney.

Pacific Bank vs. Stone, 53 Pac. Rep. 634 (Cal.).

He may carry out contracts where expressly authorized so to do, or if he is expressly authorized to act, he may make such contracts as are necessary to carry out the authority delegated to him.

Under express power to have full control of the business, the president may purchase materials.

Castle vs. Belfast, etc. Co., 72 Me. 167.

Under power to adjust and pay losses, he may transfer papers.

Baker vs. Cotter, 45 Me. 236; Aspinwall vs. Meyer, 2 Sandf. 186, S. C., 3 N. Y. 290, where the express power was very general.

Express authority, of course, may be given to the president to sell and assign the securities of the corporation.

Mitchell vs. Deeds, 49 Ill. 416.

Authority to the president to borrow includes authority to give ordinary securities; i. e., bonds, notes, acceptances, and collaterals. A person dealing with him may rely on it. He is not bound to know that the president's authority has been revoked.

Hatch vs. Coddington, 95 U. S. 48.

Where the president has, by by-laws, authority to make a contract, and does make one, and it is signed by him as such, though no corporate seal and no resolution are recited, the president may compromise and release the same. Six months' delay by directors in repudiating the compromise after knowledge is a fatal delay.

Rolling Mill vs. St. Louis, etc. R. R., 120 U. S. 256.

Parol authority to the president suffices to enable him to pay out money.

New Orleans Bldg. Co. vs. Lawson, 11 La. 34.

Although the president is given power to make a contract, yet the directors may make it, and their action overrules his.

East, etc. Co. vs. Brower, 80 Ga. 258.

Authority to sell gives authority to contract to sell.

Augusta Bank vs. Hamblet, 35 Me. 491.

Officers authorized to give a note can not agree to pay attorney fees.

Hardin vs. Iowa, etc. Co., 78 Iowa 726.

The authority of a president to sell or lease gives him power to point out and make representations as to the boundaries.

Holmes vs. Turner's Falls Co., 150 Mass. 535.

The president who makes an assignment of the company's assets for the benefit of creditors under a resolution of the board of directors can not afterward attack it.

Re George T. Smith, etc. Co., 86 Mich. 149.

The authority of the president to buy property gives authority also to put on credit.

Arapahoe, etc. Co. vs. Stevens, 13 Colo. 534.

Under a by-law giving him authority, the president may purchase on credit.

Siebe vs. Joshua, etc. Works, 86 Cal. 390.

An assignment of a corporate claim by the manager and president in the regular course of business, and with the knowledge and consent of the board of directors, is sufficient.

Greig vs. Riordan, 99 Cal. 316.

Under a broad power given to the president to make contracts, he may take a lease of property.

Hawley vs. Gray, etc. Co., 106 Cal. 337.

Where the president is in the habit of and is permitted to transact business for the corporation continuously for a long period of time with the consent of the directors, the corporation is bound by his acts.

"The execution of the paper could not be held to be in excess of the power given, and it was clearly the duty of the directors to give contrary instructions, if they wished to withdraw the general management from the president; and to dis-

affirm the action of their agents promptly and at once, if they object to it."

Fitzgerald, etc. Co. vs. Fitzgerald, 137 U. S. 98, 109.

The president binds the company when he does all the business with the knowledge and consent of the directors.

McComb vs. Barcelona, etc. Assoc., 134 N. Y. 598, 608.

Where for eight years the president has been allowed to manage and carry on the whole business of the company, and to indorse its name to notes in order to raise money for the business, and the company had no cash capital and no other way of obtaining money, it is for the jury to say whether the company is bound by such an indorsement by him.

Fifth Nat. Bank vs. Navassa, etc. Co., 119 N. Y. 256;
Cf. National Bank vs. Navassa Phosphate Co., 56 Hun. 136.

Where for many years the president has managed a company, the company's note executed by him binds the company without special authority.

Martin vs. Niagara, etc. Co., 122 N. Y. 165, *aff'g* 44 Hun. 130.

Where the president for several years has run the company, borrowed money for it, and given its notes, etc., and the by-laws give him "general supervision over the property and affairs of the corporation," the company's note made by him, and an assignment of "\$150,000 of such good and collectible accounts now existing or that shall hereafter accrue or be acquired in the conduct of the business," are valid.

Preston Nat. Bank vs. George T. Smith, etc. Co., 84 Mich. 364.

A president who has been accustomed to issue corporate notes may bind the corporation by similar note.

McDonald vs. Chisholm, 131 Ill. 273.

A general understanding that the president and secretary shall manage the business and make contracts, and their open and public assumption of that power, with the knowledge and

acquiescence of the directors, are equal to a vote of the directors authorizing them to make contracts.

Sherman, etc. Co. vs. Morris, 43 Kan. 282.

Where the president and secretary of a mining company have for a long time signed checks and they have been paid by a bank, they may continue to draw checks and the bank must pay them. The corporation is liable for overdrafts caused thereby.

Mining Co. vs. Angelo, etc. Bank, 104 U. S. 192.

A uniform practice of a company for several months previous to the transfer of a corporate note by its president, in case of notes negotiated for the purpose of raising money to carry on its legitimate business, where such notes were payable to the company, to have them indorsed by the president is sufficient authority for his indorsement.

Marine Bank vs. Clement, 31 N. Y. 33.

See also, in general, *Chicago, etc. Ry. vs. James*, 24 Wis. 388; *First Nat. etc. Bank vs. North, etc. Co.*, 86 Mo. 125, where the president and the secretary were accustomed to make notes. Whether the board of directors for three years relinquishes to the president the exclusive management of the business of the corporation and the purchase of all classes of articles, giving corporate notes, bills, and securities therefor, and then the directors took charge and for several years continued business without repudiating his acts, his purchase of locomotives and giving corporate notes therefor while he was in charge binds the corporation.

Olcott vs. Tioga R. R., 27 N. Y. 546.

If accustomed so to do, the president may settle an account and take a due-bill in payment.

Dougherty vs. Hunter, 54 Pa. St. 380.

Where the president has been accustomed to make and indorse paper, the corporation will be bound, even though the directors supposed that all business had been stopped.

National Park Bank vs. German, etc. Co., 53 N. Y. Super Ct. 367.

Where the president has several times been authorized to pledge corporate securities, and now does so without special authorization, and a majority of the directors ratify the act, not in meeting, but separately, the pledge is legal.

Bibb vs. Hall, 101 Ala. 79.

Where the president owns practically all the stock, and for years has managed the business without any meeting of the board of directors, a sale of the corporate property by him is legal.

McElroy vs. Minnesota, etc. Co., 71 N. W. Rep. 652 Wis.

The authority of the president to discharge mortgages may be shown by the fact that he has done so many times.

Swasey vs. Emerson, 168 Mass. 118.

The power of a president of a bank to rediscount paper may arise from his having done so for a long time to the knowledge of the board of directors.

U. S. Nat. Bank vs. First Nat. Bank, 79 Fed. Rep. 296.

Where the president of a bank is practically manager, he may settle a claim by taking an assignment of a judgment.

First Nat. Bank vs. New, 146 Ind. 411.

Long usage may give the president authority.

Estes vs. German Nat. Bank, 62 Ark. 7; Missouri Pac. Ry. vs. Sidell, 67 Fed. Rep. 464.

Where the president, who is also general manager and financial agent, is accustomed to borrow money for the corporation, he binds the company by a loan, even though he misapplies the proceeds.

Kraft vs. Freeman, etc. Co., 87 N. Y. 628.

If he has been accustomed for a long time to sign notes, a person taking a note without his signature is not protected.

Davis, etc. Co. vs. Best, 105 N. Y. 59.

The president has no implied power to sell the lands of the company, and the power given by usage to former presi-

dents to sell and take a purchase-money lien does not give power to sell without retaining that lien.

Fitzhugh vs. Franco-Texas Land Co., 81 Tex. 306.

The president, even though he is also manager, head and majority stockholder, can not bind the corporation by his statement that the corporation was to indemnify him from loss on certain indorsements made by him.

Minneapolis Trust Co. vs. Clark, 47 Minn. 108.

Where the board of directors allow one of its officers the exclusive management of its affairs, the company is bound by his acts.

Davies vs. New York Concert Co., 13 N. Y. Supp. 739;
Sparks vs. Dispatch Transfer Co., 104 Mo. 531.

Although the president has been accustomed to issue corporate notes, yet, if the bank taking the note in question knew that the proceeds were to be used by him in his private business, the note can not be enforced against the corporation.

Third Nat. Bank vs. Marine Lumber Co., 44 Minn. 65.

It may be stated generally that where the directors allow a president to do the business of the corporation and accept the benefits of his contracts or ratify his acts, even without any authority, it will bind the corporation.

Pittsburgh, etc. Ry. vs. Keokuk Bridge Co., 131 U. S. 371.

Where the president bought railroad iron without authority so to do, but the directors stood by and allowed the corporation to use it, the company is liable for the price.

Scott vs. Middleton, etc. R. R. 86 N. Y. 200.

If a corporation retains and uses money borrowed for it by its officer in excess of his authority, it ratifies the transaction, and is liable.

Willis vs. St. Paul Sanitation Co., 53 Minn. 370.

A pledge of bonds by the president is ratified by the directors knowing thereof and accepting the proceeds.

Prentiss, etc. Co. vs. Godchaux, 66 Fed. Rep. 224.

A bank is liable for money received, and used by it in its business, even though the president was not authorized to borrow it.

Blanchard vs. Commercial Bank, 75 Fed. Rep. 249.

A bank can not enforce notes which its president obtains for it by misrepresentations inducing the maker of the notes to give them in exchange for the notes of a worthless party.

Wilson vs. Pauly, Fed. Rep. 129.

The president may release a mortgage where a majority of the directors separately authorized it, and the stockholders in meeting assembled gave him general authority.

Smith vs. Wells, etc. Co., 46 N. E. Rep. 1000 (Ind.).

By acquiescence of the board of directors, the president's contract employing an editor and manager of a newspaper may bind the company.

Jones vs. Williams, 39 S. W. Rep. 486 (Mo.).

Allowing the contract to be completed cures any defect of power on the part of the president to make the contract.

Omaha, etc. Co. vs. Burns, 49 Neb. 229.

Accepting the benefit of the president's contract cures any defect in his authority.

Davies vs. Harvey Steel Co., 6 N. Y. App. Div. 166.

By accepting a deed of a right of way a corporation accepts written covenants which its president makes in connection therewith.

Mobile, etc. Ry. vs. Gilmer, 85 Ala. 422.

Where the president, as the financial manager, pledges the company's bonds, and for more than a year such pledge continues without objection, the pledge is ratified.

Illinois T. & S. Bank vs. Pacific Ry., 49 Pac. Rep. 197 (Cal.).

Although the by-laws require notes to be signed by the secretary, yet by acquiescence a note signed by the president alone may bind the corporation.

Illinois T. & S. Bank vs. Pacific Ry. 49 Pac. Rep. 197 (Cal.).

A chattel mortgage given by the president and treasurer, without previous authority from the directors, may be validated by the corporation accepting the benefit of the same

Edelhoff vs. Horner, etc. Co., 39 Atl. Rep. 314 (Md.).

A contract made by the president without authority may be considered ratified by the fact that the directors individually knew of the same, although they did not act upon the matter as a board.

Henry vs. Colorado, etc. Co., 51 Pac. Rep. 90 (Colo.).

A railroad contractor may enforce his construction contract with a railroad corporation, although he made it with the president, and the board of directors did not pass upon it, where the contractor proceeded to perform. The contractor was justified in stopping work when he was not paid according to the contract.

Cunningham vs. Massena, etc. R. R., 63 Hun. 439.

Acquiescence in sales by the president, where a vendor's lien was retained, does not sustain a sale by him without retaining such a lien.

Fitzhugh vs. Franco-Texas Land Co., 81 Tex. 306.

Although the president accepts in the corporate name a draft drawn on him personally, yet where the bank of the corporation pays the draft and charges it to the corporation, and the latter acquiesces for nine months, it can not hold the bank liable.

McLaren vs. First Nat. Bank, 76 Wis. 259.

Ratification of the president's contract with an attorney.

Merrill vs. Consumers' Coal Co., 114 N. Y. 216.

A transfer of all the property by the president is valid where the directors and all the stockholders knew of it and assented to it.

Fort Worth Pub. Co. vs. Hitson, 80 Tex. 216.

The company, by accepting and using the property purchased by the president without authority, thereby ratifies the purchase.

West Salem Land Co. vs. Montgomery Land Co., 89 Va. 192.

That stockholders may ratify and validate notes given by the president,—

Martin vs. Niagara, etc. Mfg. Co., 44 Hun. 130; aff'd 122 N. Y. 165.

The contracts of the president may be ratified subsequently by the board of directors.

Wehrhane vs. Nashville, etc. R. R., 4 N. Y. St. Rep. 541.

For a clear statement of this principle, see Dabney vs. Stevens, 40 How. Pr. 341.

Rates as advertised by the president bind the railroad when it continues to accept them.

Willard vs. Gould, 32 N. H. 230.

The president's unauthorized contracts, when known to and acted upon by the directors and corporation, are binding.

Perry vs. Simpson, etc. Co., 37 Conn. 520.

Where the president of a bank instructs its correspondent bank to charge to the former a debt due by him to the latter bank, and the accounts of the latter to the former bank showed to that effect, and no objection is made, the former bank is bound.

Burton vs. Burley, 9 Biss. 253.

A lease by the president and treasurer without authority may be ratified by the stockholders.

Mount Washington Hotel Co. vs. Marsh, 63 N. H. 230.

Or a mortgage.

Martin vs. Niagara, etc. Co., 44 Hun. 130.

A bank is liable on an agreement of its president to give a person ten shares of stock if he would deposit with it, the deposit having been made.

Rich vs. State Nat. Bank, 7 Neb. 201.

Where the company acquiesces in work done by contract with the president, it is liable.

Grape Co. vs. Small, 40 Md. 395.

The company may ratify a mortgage given by him.

Krider vs. Western College, 31 Iowa 547; Sherman vs. Fetch, 98 Mass. 59, where all but one of the directors knew and acquiesced.

The acquiescence of a minority of the directors is insufficient.

Yellow, etc. Co. vs. Stevenson, 5 Nev. 224.

Acceptance of the property purchased, with knowledge, is ratification.

Dent vs. North, etc. Co., 49 N. Y. 390.

The failure of the president to repudiate at once an agent's unauthorized act is ratification.

First Nat. Bank vs. Fricke, 75 Mo. 178; Alabama, etc. R. R. vs. Kidd, 29 Ala. 221.

Ratification of a president's acts may arise by long use of the results, even though the directors expressly repudiated the acts, but did not notify the other party.

Belleville Sav. Bank vs. Winslow, 35 Fed. Rep. 471.

It is a sufficient ratification if the directors discuss the matter at a meeting, though they take no action.

Walworth, etc. Bank vs. Farmers', etc. Co., 16 Wis. 629.

A corporate agent with full powers may ratify the president's act.

Perry vs. Simpson, etc. Co., 37 Conn. 520.

Acquiescence of the board of directors may cure the omission of a previous resolution as required by the charter in the issue of the bonds.

Curtis vs. Leavitt, 15 N. Y. 1, the court saying of the board (p. 49):—

"They may previously resolve; they may subsequently acquiesce; they may expressly ratify; they may intentionally receive and appropriate the proceeds of the unauthorized

transaction, and so put it out of their power to dispute its validity."

The acts of the president of a corporation may be inferred even though the transaction may be a contract under seal and the minutes of the corporation fail to show any authority for the act whatever.

Jacksonville, etc. Nav. Co. vs. Hooper, 160 U. S. 514.

§ 185. Vice-president.

Like rules govern the vice-president where he has been allowed for a long series of time to transact the business of the corporation.

The vice-president of a bank may, by reason of having for a long time conducted the business of the bank, have power to assign a judgment owned by the bank.

Cox vs. Robinson, 82 Fed. Rep. 277.

The vice-president may sign a corporate deed if the president refuses to do so.

Smith vs. Smith, 62 Ill. 492.

The fact that a vice-president swears to a complaint does not raise a presumption that the company authorized its service.

American Waterworks Co. vs. Venner, 18 N. Y. Supp. 379.

The vice-president may make an assignment for the benefit of creditors, where he is authorized—

"to use all means and do all acts and make all deeds by him deemed necessary or proper to serve the best interest of the association, and to use the corporate seal for such purpose."

Huse vs. Ames, 104 Mo. 91.

The vice-president has no power to sell the bonds of the company, even though he is a director, member of the executive committee, and one of the two persons who "run" the company. The purchasers are not bona fide.

American L. & T. Co. vs. St. Louis, etc. Ry., 42 Fed. Rep. 819.

It may be proved that the vice-president had authority to accept a draft, although drawn by himself upon the company.

Rumbough vs. Southern Imp. Co., 106 N. C. 461.

A suit is presumed to be authorized where the vice-president swears to the pleading.

Lacaze vs. Creditors, 46 La. Ann. 237.

The vice-president's contracts may be ratified by the directors.

Dallas vs. Columbia, etc. Co., 158 Pa. St. 444.

The vice-president may, in certain circumstances, employ counsel.

Streeton vs. Robinson, 102 Cal. 542.

The vice-president has no power to sign notes.

Morris vs. Griffith, etc. Co., 69 Fed. Rep. 131.

As to the powers of a vice-president, see also Missouri, etc. Ry. vs. Faulkner, 88 Tex. 649.

§ 186. Secretary and Treasurer.

The secretary and treasurer of a corporation have no power to act or contract for the corporation.

The secretary has no power to assign the company's claims for goods sold by it. The assignee's rights are not perfected by the directors' resolution made after he sues on the account.

Read vs. Buffum, 79 Cal. 77.

The secretary of a religious corporation can not contract for paying for the corporation.

Thomason vs. Grace, etc. Church, 45 Pac. Rep. 939 (Cal.).

The secretary has no implied power to bind the company.

Wolf vs. Davenport, etc. R. R., 93 Iowa 218.

He can not sell and assign its notes.

Blood vs. Marcuse, 38 Cal. 590.

Nor sign a draft for it.

First Nat. Bank vs. Hogan, 47 Mo. 474.

Nor purchase iron for it.

Williams vs. Chester, etc. R. R., 15 Jur. 828.

Nor accept a bill of exchange.

Neale vs. Turton, 4 Bing. 149.

Nor bind it to pay a debt of an old company whose property it purchased upon a reorganization.

American, etc. Ry. vs. Miles, 52 Ill. 174.

Nor rent a place for the company.

Ridley vs. Plymouth, etc. Co., 2 Exch. 711.

Nor accept accommodation paper.

Farmers', etc. Bank vs. Empire, etc. Co., 5 Bosw. 275.

Nor purchase notes.

Kingsbridge Flour Mill Co. vs. Plymouth, etc. Co., 2 Exch. 718.

Where the assistant secretary signs a mortgage instead of the secretary, it is sufficient to prove that he was the *de facto* assistant secretary.

Augusta, etc. R. R. vs. Kittel, 52 Fed. Rep. 63.

The secretary, however, is one of the agents of the company, but he is confined to his customary duties, and in such duties, he represents the company.

Hastings vs. Brooklyn Life Ins. Co., 138 N. Y. 473.

The secretary, like any other managing agent of the corporation, may act and contract when he is expressly authorized, or his acts and contracts may be ratified after they are made.

Hill vs. Manchester, etc. Co. 5 B. & Ad. 866, where the secretary was authorized to affix the corporate seal.

New England, etc. Ins. Co. vs. DeWolf, 25 Mass. 56, where the company accepted the benefits. A note signed by the corporate secretary as directed by the president, the money therefor being used by the corporation, is enforceable against it.

Jansen vs. Otto Stietz, etc. Co., 1 N. Y. Supp. 605.

Although corporate notes given by the secretary to a bank are unauthorized, yet if the money was used regularly in the business of the company, it is liable.

Pauly vs. Pauly, 107 Cal. 8.

Where the secretary has been permitted to sell the notes of the corporation, a transfer of the note by him to the bank makes the latter a bona fide purchaser, the corporation being the payee.

Commercial Nat. Bank vs. Brill, 37 Neb. 626.

The secretary has power to endorse the company's note for discount or sale where for a long time he has been allowed to do so.

Blake vs. Domestic, etc. Co., 38 Atl. Rep. 241 (N. J.).

The treasurer of a company is not unlike the secretary and has no power to contract for the corporation by virtue of his being treasurer. The treasurer has no power to borrow money and give the corporate note therefor, and the company was not liable where the money was paid into the corporate treasury and immediately embezzled by the treasurer.

Craft vs. South Boston R. R., 150 Mass. 207.

A treasurer has no power to sign the corporate name to promissory notes unless he is expressly given that power. If the note is made payable to his own order, the purchaser of it must take notice that it was issued without authority.

Chemical Nat. Bank vs. Wagner, 20 S. W. Rep. 535 (Ky.).

Notes of a cattle company purporting to be signed by it through its treasurer are presumed to have been authorized.

Corcoran vs. Snow Cattle Co., 151 Mass. 74.

Where a corporation repudiates a pledge of stock made by its treasurer, it can not sue the pledgee for the money received by the pledgee upon a sale of the stock by the latter.

Holden vs. Metropolitan Nat. Bank, 151 Mass. 112.

The treasurer can not, upon the sale of a note held by the company, endorse the note so as to render the company liable, even though a trustee was aware thereof, the opening of an account with the bank being unknown to the company.

Columbia Bank vs. Gospel Tabernacle, 57 N. Y. Super. Ct. 149.

A treasurer has no power to issue corporate notes, and where he does so, the proceeds being used to pay his personal debt to the corporation, the notes are not binding on the company.

First Nat. Bank vs. Council Bluffs, etc. Co., 56 Hun. 412.

The corporate endorsement of a note by the treasurer without authority and for accommodation does not bind the corporation.

Wahlig vs. Standard, etc. Co., 9 N. Y. Supp. 739.

The treasurer has no inherent authority to endorse.

Security Bank vs. Kingsland, 5 N. D. 263.

The treasurer has no implied power to make a corporate note.

Oak, etc. Co. vs. Foster, 7 N. M. 650.

The treasurer of a manufacturing corporation has no implied power to bind the corporation as an accommodating endorser, and a person taking the note with notice can not enforce such endorsement.

Usher vs. Raymond Skate Co., 163 Mass. 1.

An arbitration agreed to by the treasurer was sustained in Remington Paper Co. vs. London Assur. Corp., 12 N. Y. App. Div. 218.

A demand for rent may properly be made on the secretary and treasurer.

State vs. Felton, 52 N. J. L. 161.

He can not compromise or relinquish its claims.

Carver Co. vs. Manufacturers', etc. Co., 72 Mass. 214.

Nor sell and endorse its paper.

Bradley vs. Warren, etc. Bank, 127 Mass. 107; Holden vs. Upton, 134 Mass. 177; Contra, Perkins vs. Bradley, 24 Vt. 66.

Nor assume the debt of a third prson.

Stark Bank vs. U. S. Pottery Co., 34 Vt. 144.

Nor sell and assign a mortgage owned by the corporation, even though he uses the corporate seal.

Jackson vs. Campbell, 5 Wend. 572.

He may employ an attorney to collect unpaid bills.

Bristol, etc. Bank vs. Keary, 128 Mass. 298.

He can not give a release under seal.

Dedham Inst. vs. Slack, 60 Mass. 408.

He may accept money.

Brown vs. Winnissimmet Co., 93 Mass. 326.

The treasurer's acts may become valid by custom or by acquiescence in and by the corporation.

The treasurer has no inherent power to sign and endorse corporate notes, but long usage may constitute such authority.

Page vs. Fall River, etc. R. R., 31 Fed. Rep. 257.

Lester vs. Webb, 83 Mass. 34, where the treasurer endorsed a note.

Bank of Attica vs. Pottier, etc. Co., 1 N. Y. Supp. 483; Partridge vs. Badger, 25 Barb. 146.

Foster vs. Ohio, etc. Co., 17 Fed. Rep. 130, where he gave a note. Where the secretary and treasurer have been accustomed to manage the entire business and make contracts, a contract entered into by them for the company is legal and enforceable.

Moore vs. H. Gaus Co., 113 Mo. 98; Foster vs. Ohio, etc. Co., 17 Fed. Rep. 130.

Fifth, etc. Bank vs. First Nat. Bank, 48 N. J. L. 513, where the treasurer pledged securities.

It may be said generally that the treasurer can assume to be a managing agent of the corporation, and when it is customary for him to thus act, he may sell its property and borrow money and give indemnity.

Phillips vs. Campbell, 43 N. Y. 271; Fay vs. Noble, 66 Mass. 1; Fifth, etc. Bank vs. First Nat. Bank, 48 N. J. L. 513.

Yet, it must not be understood that they have any such power. It is clearly without their authority.

Odd Fellows vs. Bank of Sturgis, 42 Mich. 461; Gafford vs. American, etc. Co., 77 Iowa 736; Butler vs. Duprat, 51 N. Y. Super. Ct. 77; Alexander vs. Cauldwell, 83 N. Y. 480; Cf. Alexander vs. Brown, 9 Hun. 641; Winsted, etc. Co. vs. New Britain, etc. Co., 38 Atl. Rep. 310 (Conn.); Adams vs. Mills, 60 N. Y. 533.

A corporation can always acquiesce in contracts made by any of its officers. It can acquiesce in contracts made by the secretary and treasurer.

St. James's Parish vs. Newburyport, etc. R. R., 141 Mass. 500, where the treasurer gave an obligation under seal and reported it in his reports, and a committee approved. If the company ratifies a contract made by the president and secretary, the company may compel its officers to give it the benefit of the contract.

Church vs. Sterling, 16 Conn. 388.

Accepting the benefit of an insurance contract made by the secretary and president accepts the contract itself:

Emmet vs. Reed, 8 N. Y. 312.

An endorsement by the secretary, with the knowledge and acquiescence of the directors, is binding.

Williams vs. Cheney, 69 Mass. 215.

So, also, where he pledges bonds with their knowledge and acquiescence.

Darst vs. Gale, 83 Ill. 136.

And see Durar vs. Hudson, etc. Ins. Co., 24 N. J. L. 171, in insurance contracts; and Conover vs. Mutual Ins.

Co., 1 N. Y. 290, where he was accustomed to contract for the company.

Chicago Bldg. Soc. vs. Crowell, 65 Ill. 453.

Talladega Ins. Co. vs. Peacock, 67 Ala. 253, where the secretary was accustomed to sign notes. Where a corporation uses a wharf under a contract made by its treasurer, it is liable for the contract price.

Taylor vs. Albemarle, etc. Co., 105 N. C. 484.

Taking the benefit of a piece of statuary for advertising purposes binds it to pay therefor, though the treasurer made the contract.

Ellis vs. Howe, etc. Co., 12 Daly 78.

§ 187. Authority of Officers and Agents.

A corporation being artificial and a creature of the law, has no physical means by and through which it can transact business in so far as it is in and of itself concerned, and being a person separate, apart and distinct from its stockholders, it necessarily follows that whatever business is transacted for the corporation must be done by and through natural persons. Acting separately and distinctly from the corporation and for it, they become its agents, and as such simply have the power of agents, and no more.

The officers of a corporation act under the power of the charter or delegated to them by the directors or managers in whom, as the representatives of the corporation, the control of its business is vested, and not unlike an agent of a natural person, can go only so far as their authority reaches. That authority may be an expressed authority, or merely implied. It matters little what the name of the officer of the corporation may be who transacts the general business of the company, he has the implied power to carry out its business however far-reaching that business may be. He may borrow money, purchase supplies, engage services, and in short, do anything that is necessary to carry out the program of the company.

Matson vs. Alley, 141 Ill. 284; 31 N. E. 419; Rathbun vs. Snow, 123 N. Y. 343; 25 N. E. 379.

There are certain limitations, however, upon the mere every-day officers of the corporation in the conduct of the business of the company. For instance, they can not release a debtor from his obligation to the corporation, nor release a subscriber of his liability on his subscription.

Bank of United States vs. Dunn, 6 Pet. 51; Moshannon Land & Lumber Co. vs. Sloan (Pa. Sup.), 7 Atl. 102; Potts vs. Wallace, 46 U. S. 689; 13 Sup. Ct. 196.

All the powers of the president depend for their authority outside of the routine business of the company upon the expressed delegation of authority from the board of directors.

Titus vs. Railroad Co., 37 N. J. Law 98; 1 Mor. Priv. Corp. 537; 2 Cook, Stock, Stockh & Corp. Law, 712, 716; Walworth County Bank vs. Farmers' Loan & Trust Co., 14 Wis. 325; Templin vs. Railway Co., 73 Iowa 548; 35 N. W. 634; Potts vs. Wallace, 146 U. S. 689; 13 Sup. Ct. 196.

All persons dealing with the corporation must take notice of its charter and general notice must be taken of its by-laws. They are bound to know whether a person assuming to be an agent of a corporation is the proper officer to transact the particular business about which they are going to contract.

Blcock's Ex'r vs. Iron Co., 82 Va. 913; 1 S. E. 325.

This rule is limited in its force by the fact that if the corporation holds out to the public and allows one of its subordinate agents to transact the business of the company, it is estopped to deny his power to make the particular contract, for that persons may act upon the apparent authority of the agent and are not bound by any limitations upon his power or secret instruction unbeknown to them.

Rathbun vs. Snow, 123 N. Y. 343; 25 N. E. 379; Marshall vs. Express Co., 7 Wis. 1; 73 Am. Dec. 381; Carson City Sav. Bank vs. Carson City Elevator Co., 90 Mich. 550; 51 N. W. 641; Sherman Center Town Co. vs. Swigart, 43 Kan. 292; 23 Pac. 569.

An officer or agent may act outside of the every-day scope of his business, if he is authorized by the board of directors, and if the board of directors permit an officer to transact business without the scope of his authority and hold him out to the public as a general agent the corporation will be bound by the transactions consummated by him.

Fifth Ward Sav. Bank vs. First Nat. Bank, 48 N. J. Law 513; 7 Atl. 318; McNeil vs. Boston Chamber of Commerce, 154 Mass. 277; 28 N. E. 245; Mining Co. vs. Anglo-Californian Bank, 104 U. S. 192.

This apparent authority and holding out does not relieve a person who contracts with such an inferior officer from his duty of ascertaining whether he has authority, because he is bound to know or should know that the officer has authority to transact that which he purports to do, however. if he has apparent authority to transact the business, it seems that the stranger need look no further.

Credit Co. vs. Howe Mach. Co., 54 Conn. 357; 8 Atl. 472; New York & N. H. R. Co. vs. Schuyler, 34 N. Y. 30; 2 Cumming, Cas. Priv. Corp. 119; Fifth Ward Sav. Bank vs. First Nat. Bank, 48 N. J. Law 513; 7 Atl. 318; Page vs. Railroad Co., 31 Fed. 257.

"The rule is well settled that if a corporation permit the treasurer to act as their general fiscal agent, and hold him out to the public as having the general authority implied from his general name and character, and by their silence and acquiescence suffer him to draw and accept drafts, and to indorse notes payable to the corporation, they are bound by his acts done within the scope of such implied authority."

Lester vs. Webb, 1 Allen (Mass.) 34.

The by-laws of the corporation are enactments of the corporation for the government of its officers, its board of directors and stockholders, and as to third persons, are mere private regulations about which they have no concern, unless they have knowledge of them or make the contract relying upon them.

Rathbun vs. Snow, 123 N. Y. 343; 25 N. E. 379; Estate of Millward-Cliff Cracker Co., 161 Pa. St. 157; 28 Atl. 1072.

Any act of an officer that might have in the first place been made by a corporation may be ratified, and where a corporation accepts the benefit of the contract with full knowledge of the circumstances surrounding it, they will be presumed to have ratified the contract.

Burrill vs. President, etc., 2 Metc. (Mass.) 163, W. D. Smith, Cas. Corp. 112; M'Laughlin vs. Railway Co., 8 Mich. 100; Leggett vs. Banking Co., 1 N. J. Eq. 541; Aurora Agricultural & Horticultural Soc. vs. Paddock, 80 Ill. 263; Reichwald vs. Hotel Co., 106 Ill. 439; Grape Sugar & Vinegar Manuf'g Co. vs. Small, 40 Md. 395; Despatch Line of Packets vs. Bellamy Manuf'g Co., 12 N. H. 205.

Ratification, under such circumstances, is a mere recontracting and coincidence with the original authority to transact the business in the first instance.

Despatch Line of Packets, *supra*.

The ratification of contracts has a limitation which is a limitation upon the power of the corporation itself or its officers to make the particular contract in the first instance. If the contract was such that would be an *ultra vires* contract, then it is not within the scope of the charter and can not be ratified.

"The powers of agents of corporations to enter into contracts in their behalf are limited, by the nature of things, to such contracts as the corporations are by their charters authorized to make. . . . The same want of power to give authority to an agent to contract, and thereby bind the corporation, in matters beyond the scope of their corporate objects, must be equally conclusive against any attempt to ratify such contract. What they can not do directly they can not do indirectly. They can not bind themselves by the ratification of a contract which they had no authority to make. The power of the agent must be restricted to the business which the company was authorized to do. Within the scope of the business which they had power to transact, he, as its agent, may be authorized to act for it, but beyond that he could not be authorized, for its powers extend no further."

Downing vs. Road Co., 40 N. H. 230; 1 Cumming, Cas. Priv. Corp. 148; Weckler vs. Bank, 42 Md. 581.

CHAPTER XIX.

INCORPORATION OF COMPANIES

§ 188. Who May Become Incorporators.

The charter of a corporation being a contract, it is like any other contract. The parties to it must be *sui juris* and competent to enter into a contract.

In re Globe Mut. Ben. Assn., 63 Hun. 263.

Corporations are generally composed of natural persons in their natural capacity, but they may be composed of persons in their political and artificial capacity as other corporations.

Regent's University of Maryland vs. Williams, 9 Gill. & J. (Md.) 365, 393.

§ 189. Number of Corporations.

At the Roman law "three form a corporation."

Sharswood's Blackstone, vol. 1, note B, p. 468.

The statutes of the States require a certain number, some more, some less as a minimum number. The maximum may be any number above that required by statute, but no less will be sufficient to bring the corporation into existence.

Montgomery vs. Forbes, 148 Mass. 249; 19 N. E. 342; 1 Cumming, Cas. Priv. Corp. 69; Broderip vs. Salomon, L. R. 2 Ch. 323; State vs. Critchett, 37 Minn. 13; 32 N. W. 787.

The incorporators must be bona fide people and not dummies of straw.

Broderic vs. Salomon, L. R. 2 Ch. 323.

It is within the legislative power to create one person into a corporation, but that it seldom does. It must be clear from the terms of the act that such is its intention.

Penobscot Boom Corp. vs. Lamson, 16 Me. 224; Day vs. Stetson, 8 Greenl. (Me.) 365.

Where a statute declares that "any number of persons"

may form a corporation, this has been held to mean more than one.

Louisville Banking Co. vs. Eisenman, 94 Ky. 83; 21 S. W. 531, 1049; Swift vs. Smith, 65 Md. 428; 5 Atl 534.

One person may buy all the shares of a corporation and still the corporation exist.

State vs. International Ins. Co., 88 Wis. 512; 60 N. W. 796.

§ 190. Purpose of Corporation.

In the Northern Securities decision, speaking upon the subject of the unlawful purpose of corporation, the federal court said:—

“Presumptively, at least, no charter granted by State is intended by the State to have that effect or to be used for such a purpose; and in the present instance it is clear that the State of New Jersey did not intend to grant a charter under cover of which, an object denounced by Congress as unlawful,—namely, a combination conferring the power to restrain interstate commerce, might be formed and maintained, because the enabling act under which the Securities Company was organized expressly declares that three or more persons may avail themselves of the provision of the act and become a ‘corporation for any lawful purpose.’”

“This language is not merely perfunctory. It means obviously that whatever powers the incorporators saw fit to assume they must hold and exercise for the accomplishment of lawful objects.”

“The words in question operate, therefore, as a limitation upon all the powers enumerated in the articles of association.”

United States vs. The Northern Securities Company, the Northern Pacific Railway Company, the Great Northern Railway Company, James J. Hill, William P. Clough, D. Willis James, John S. Kennedy, J. Pierpont Morgan, Robert Bacon, George F. Baker, and Daniel S. Lamont.

When the above case reached the supreme court of the United States, the supreme court said:—

“By the express words of the Constitution, Congress has power to ‘regulate commerce with foreign nations, and among the several States, and with the Indian tribes.’”

"No State can, by merely creating a corporation, or in any mode, project its authority into other States and across the continent so as to prevent Congress from exerting the powers it possesses under the Constitution over the interstate and international commerce, so as to exempt that corporation so engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce."

"So far as the Constitution of the United States is concerned, a State may indeed create a corporation, define its power, prescribe the amount of its stock and the mode in which it may be transferred. It may even authorize one of its corporations to engage in commerce of every kind,—domestic, interstate, and international. The regulation or control, of purely domestic commerce of a State is, of course, with the State, and Congress has no direct power over it so long as what is done by the State does not interfere with the operations of the general government or any legal enactment of Congress. A State, if it chooses so to do, may even submit to the existence of combinations within its limits that restrain its international trade."

§ 191. Purpose Subservient to National Will.

"No State can endow any of its corporations or any combine of its citizens with authority to disobey the national will as manifest in legal enactments of Congress. To depart from it because of the circumstances of a special case, or because the rule in its operation may possibly affect the interest of business, is to endanger the safety and integrity of our institutions and make the Constitution mean not what it says, but what interested parties wish it to mean at a particular time and under particular circumstances. The supremacy of the law is the foundation rock upon which our Constitution rests."

See Merger Decision Supra.

§ 192. Purpose of the Corporation.

The purpose of a corporation must be within the scope allowed by the statute under which the corporation is formed. Generally the limitation upon the formation of a corporation is that it must be for a "lawful purpose," but the question is not whether it is lawful, but is whether it is allowed or authorized by statute.

State vs. International Inv. Co., 88 Wis. 512; 60 N. W. 796.

Most of the statutes have a general clause, for instance, the Wisconsin statute contains the clause, after reciting specifically what may be the subject of incorporation, "or for any lawful business or purpose whatever."

In the State of Missouri we find the following language:—

"For any other purpose intended for pecuniary profit or gain not otherwise specifically provided for, and not inconsistent with the constitution and laws of this State."

Under the last clause it was held in the State of Missouri that corporations could be formed according to the plain meaning and language expressed, and that the specific suggestions preceding the general clause ought in no wise limit it.

State vs. Corkins, 123 Mo. 56; 27 S. W. 363.

Under a statute having specific clauses and using the language therefor of "other industrial pursuits," it was held that a corporation might be formed for any other industrial pursuits.

Wells, Fargo & Co. vs. Northern Pac. R. Co., 23 Fed. 469, 474.

For similar constructions of statute, see York Park Bldg. Assn. vs. Barnes, 39 Neb. 834; 53 N. W. 440; National Bank vs. Texas Inv. Co., 74 Tex. 421; 12 S. W. 101; Brown vs. Corbin, 40 Minn. 508; 42 N. W. 481.

When a corporation is formed for the purpose of forming a trust in restraint of trade and it is clear that it intends to create a monopoly, it will be held illegal, and upon *quo warranto* by the State, will be ousted from the exercise of its corporate franchise.

People vs. North River Sugar-Refining Co., 121 N. Y. 587; 24 N. E. 834; Richardson vs. Buhl, 77 Mich. 632; 43 N. W. 1102; State vs. Standard Oil Co., 49 Ohio St. 137; 30 N. E. 279; People vs. Chicago Gas Trust Co., 130 Ill. 268; 22 N. E. 798; State vs. Nebraska Distilling Co., 29 Neb. 700; 46 N. W. 155

§ 193. Name of Corporation.

A corporation must have a name. It is one of the essentials of its being. However the name of a corporation may

be any name that the corporators see fit to christen it. Some of the statutes require that the beginning and ending of a name be begun and ended with certain words, as the word, "the" for the beginning, and ending with "corporation" and in so far is a limitation upon the particular.

Conservators of the River Tone vs. Ash, 10 Barn. & Co. 349; 1 Cumming, Cas. Priv. Corp. 23; Mariot vs. Mas-cal, And. 206.

"A corporation is a body politic, consisting of material bodies, which, joined together, must have a name to do things which concern the corporation, or else it is no corporation."

Conservators of the River Tone vs. Ash, supra.

"The names of corporations are given of necessity, for the name is, as it were, the very being of the constitution; for, though it is the will of the king that erects them, yet the name is the knot of their combination, without which they could not perform their corporate acts; for it is nobody to plead and be impleaded, to take and give, until it hath gotten a name."

2 Bac. Abr. tit. "Corporations," c. 1.

"The identity of name is the principal means for effecting that perpetuity of succession with members frequently changing, which is an important purpose of incorporation."

Reg. vs. Registrar, 10 Q. B. 839.

A corporation has the right to the use of a name exclusively. It had this right at common law and is protected by some of the statutes to that extent.

"The name of a corporation is a necessary element of its existence, and, aside from any statute, the right to its exclusive use will be protected upon the same principles that persons are protected in the use of trade-marks."

State vs. McGraph, 92 Mo. 355; 5 S. W. 29; Newby vs. Railway Co., Deady, 609 Fed. Cas. No. 10,144; Holmes, Booth & Haydens vs. Holmes, Booth & Atwood Mfg. Co., 37 Com. 278; see note to R. W. Rogers Co. vs. Wm. Rogers Mfg. Co., 17 C. C. A. 579-591; 70 Fed. 1017.

However, a corporation may be known by several names.

Society for Propagating the Gospel vs. Young, 2 N. H. 310.

Every corporation has the right to change its name. This must be done, however, by and through legislative authority, and the statute must be complied with. It comes in the way of an amendment. However, in the State of New York the law provides that the court may grant an order to the corporation to change its name if "there is no reasonable objection."

In re United States Mercantile Reporting & Collecting Agency, 115 N. Y. 176; 21 N. E. 1034.

The change of the name of a corporation does not affect the property rights of the corporation in any manner, but leaves it with the same identity except the name as it was theretofore.

Girard vs. Philadelphia, 7 Wall 1.

If a corporation in making a contract should use a different name than its true name, this would not vitiate the instrument, as the corporation would be allowed to prove that the contract was made for it and would be entitled to recover, or vice versa; the opposite party would be entitled to show that the contract was made for the corporation and be entitled to recover from it, parol evidence being admissible in such cases to identify the corporation.

Hager's Town Turnpike Road Co. vs. Creeger, 5 Har. & J. (Md) 122; President, etc., of Berks & Dauphin Turnpike Road vs. Myers, 6 Serg. & R. 12; Mount Palatine Academy vs. Kleinschnitz, 28 Ill. 133; Medway Collar Manufactory vs. Adams, 10 Mass. 360; Commercial Bank vs. French, 21 Pick. (Mass.) 486; New York Institution for the Blind vs. How's Ex'rs. 10 N. Y. 84; Society for Propagating the Gospel vs. Young, 2 N. H. 310; 1 Thomp. Corp. 294, 295.

§ 194. Domicil.

It has been held that a corporation has no legal existence beyond the boundaries of the State that created it. This question arises in determining the jurisdiction of federal courts, and it is there held that a corporation,—

"is to be regarded as if it were a citizen of the State where

it was created and no averment or proof of the citizenship of its members elsewhere will be permitted. There is a presumption of law which is conclusive."

Baltimore & O. R. Co. vs. Harris, 12 Wall 65; 1 Cumming Cas. Priv. Corp. 46; Ohio & M. R. Co. vs. Wheeler, 1 Black 297; Louisville, C. & C. R. Co. vs. Letson, 2 How 497; Shaw vs. Mining Co., 145 U. S. 444; 12 Sup. Ct. 935; 2 Cumming Cas. Priv. Corp.; 5 W. D. Smith, Cas. Corp. 15; 13 Shep. Cas. Corp. 55; note to St. Louis, I. M. & S. Ry. Co. vs. Newcom, 6 C. C. A. 174; 56 Fed. 951; Bank of U. S. vs. Deveaux, 5 Cranch 61; Marshall vs. Railroad Co., 16 How. 314, 327.

The provision of the Constitution giving rise to the right of citizens to bring action in the federal court, is as follows:—

"The judicial power shall extend to all cases in law and equity arising under the Constitution or laws of the United States, and treaties made or which shall be made under their authority, . . . to all cases . . . between a State and citizens of another State, . . . between citizens of different States; . . . between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof and foreign States, citizens or subjects."

Constitution of U. S., Art. 3, Sec. 2.

In order that an action may be brought under this provision of the Constitution and the jurisdiction of the court sustained, it must appear somewhere in the pleading that the corporation was created by a certain State where the jurisdiction depends upon diverse citizenship.

Muller vs. Dows, 94 U. S. 444.

The pleadings must show by direct allegation that the corporation was created by the laws of the foreign State.

Lafayette Ins. Co. vs. French, 18 How. 404.

"A corporation created by and organized under the laws of a particular State, and having its principal office there, is, under the constitution and laws, for the purpose of suing and being sued, a citizen of that State. . . . By doing business away from their legal residence, they do not change their citizenship, but simply extend the field of their operations. They reside at home, but do business abroad."

Baltimore & O. R. Co. vs. Koontz, 104 U. S. 5, 11, 12; Shaw vs. Mining Co., 145 U. S. 444; 12 Sup. Ct. 935; 2 Cumming Cas. Priv. Corp. 5.

States have the power to incorporate corporations of other States, but in so doing, they do not join the other State in creating a corporation. Each State creates a separate and distinct corporation in and of itself.

"It is entirely competent for the State, by its legislation, to determine the mode of creating corporations within its limits; and if it sees fit to declare that a foreign corporation may become a corporation of the State by building a railroad therein, and filing a copy of its Articles of Incorporation with the secretary of state, I have no doubt that compliance with these terms constitutes the foreign corporation a domestic corporation with respect to all its transactions within such State."

Stout vs. Railroad Co., 8 Fed. 794; 1 Cumming Cas. Priv. Corp. 61; see Baltimore & O. R. Co. vs. Gallahue's Admrs., 12 Grat (Va.) 655; Louisville Trust Co. vs. Louisville N. A. & C. R. Co., 75 Fed. 433.

The reason of this rule, it is said, is that no State can pass any law that will have any extra territorial force, that is, it has no force beyond the bounds of the State that enacted it. In Missouri Pac. Ry. Co. vs. Meeh, 69 Fed. 753, it was said:—

"At this day it must be regarded as settled beyond doubt or controversy that two States of this Union can not by their joint action create a corporation which will be regarded as a single corporate entity, and, for jurisdictional purposes, a citizen of each State which joins in creating it. One State may create a corporation of a given name, and the Legislature of an adjoining State may declare that the same legal entity shall be or become a corporation of that State as well, and be entitled to exercise within its borders, by the same board of directors or officers, all of its corporate functions. Nevertheless, the result of such legislation is not to create a single corporation, but two corporations of the same name, having a different paternity."

In Chicago and N. W. R. Co. vs. Auditor, 53 Mich. 91, 18 N. W. 586, Judge Cooley said:—

"It is impossible to conceive of one joint act performed

simultaneously by two sovereign States, which shall bring a single corporation into being, except it be by compact or treaty. There may be separate consent given for the consolidation of corporations separately created, but when the two unite, they severally bring to the new entity the powers and privileges already possessed, and the consolidated company simply exercises in each jurisdiction the powers the corporation there chartered had possessed, and succeeds there to its privileges."

In *Quincy Railroad Bridge Co. vs. Adams Co.*, 88 Ill. 615, 619, it is said: Two States,—

"have no power to unite in passing any legislative act. It is impossible in the very nature of their organization, that they can do so. They can not so fuse themselves into a single sovereignty, and, as such, create a body politic which shall be a corporation of the two States, without being a corporation of each State or of either State."

Ohio & M. R. Co. vs. Wheeler, 1 Black 286; *Missouri Pac. Ry. Co. vs. Meeh*, 69 Fed. 753; 16 C. C. A. 510; *Railway Co. vs. Whitton's Admr.*, 13 Well 270; *Newport & C. Bridge Co. vs. Wooley*, 78 Ky. 523; *Fitzgerald vs. Missouri Pac. Ry. Co.*, 45 Fed. 812; *Muller vs. Dows*, 94 U. S. 444; 1 *Cumming Cas. Priv. Corp.* 53; *Nashua & L. R. Corp. vs. Boston & L. R. Corp.*, 136 U. S. 356; 10 Sup. Ct. 1004; *Chicago & N. W. R. Co. vs. Auditor*, 53 Mich. 91; 18 N. W. 586; *Racine & M. R. Co. vs. Farmers' Loan & Trust Co.*, 49 Ill. 331; *Rece vs. Newport News & M. V. Co.*, 32 W. Va. 164; 9 S. E. 212; *Bishop vs. Brainerd*, 28 Conn. 289.

§ 195. Who Can Question Corporate Existence.

Persons who undertake to form a corporation and thereafter transact business under and by authority of the corporation or supposed corporation and hold themselves out as a corporation, can not deny or will not be heard to deny that they are a corporation, neither can the corporation itself dispute its corporate character in any contract into which it has entered.

Scheufler vs. Grand Lodge, 45 Minn. 256; 47 N. W. 799; *Perine vs. Grand Lodge*, 48 Minn. 82; 50 N. W. 1022; *Narragansett Bank vs. Atlantic Silk Co.*, 3 Metc. (Mass.) 287; *Farmer's Loan & Trust Co. vs. Toledo*,

A. A. & N. M. Ry Co., 67 Fed. 49; Callender vs. Railroad Co., 11 Ohio St. 516; Stewart Paper Mfg. Co. vs. Rau, 92 Ga. 511; 17 S. E. 748; Fitzpatrick vs. Rutter, 160 Ill. 282; 43 N. E. 392; Hamilton vs. Railroad Co. (Pa. Sup.), 23 Atl. 53; Bon Aqua Imp. Co. vs. Standard Fire Ins. Co., 34 W. Va. 764; 12 S. E. 771; Independent Order of Mutual Aid vs. Paine, 122 Ill. 625; 14 N. E. 42; see also Dooley vs. Cheshire Glass Co., 15 Gray (Mass.) 494; 1 Cumming, Cas. Priv. Corp. 418.

Neither can third persons who have contracted with a supposed corporation be heard to dispute their contract on the ground that the corporation is not a legal entity as it is proposed to be.

Methodist Church vs. Pickett, 19 N. Y. 482; 1 Cumming Cas. Priv. Corp. 407; Commercial Bank vs. Pfeiffer, 108 N. Y. 242; 15 N. E. 311; Stoutimore vs. Clark, 70 Mo. 471; Minnesota Gaslight Economizer Co. vs. Denslow, 46 Minn. 171; 48 N. W. 771; Fresno Canal & Irr. Co. vs. Warner, 72 Cal. 379; 14 Pac. 37; Chubb vs. Upton, 95 U. S. 665; Swartwout vs. Railroad Co., 24 Mich. 390; Stofflet vs. Strome, 101 Mich. 197; 59 N. W. 411; Booske vs. Ice Co., 24 Fla. 550; 5 South 247; School Dist. No. 61 vs. Alderson, 6 Dak. 145; 41 N. W. 466; Cahall vs. Association, 61 Ala. 232; Douglass County Com'rs vs. Bolles, 94 U. S. 104; Tarbell vs. Page, 24 Ill. 46; Winget vs. Association, 128 Ill. 67; 21 N. E. 12; Columbia Electric Co. vs. Dixon, 46 Minn. 463; 49 N. W. 244; Building & Loan Assn. vs. Chamberlain, 4 S. D. 271; 56 N. W. 897; Butchers & D. Bank vs. McDonald, 130 Mass. 264; 1 Cumming Cas. Priv. Corp. 420; Worchester Medical Inst. vs. Harding, 11 Cush. (Mass.) 285; Lehman vs. Warner, 61 Ala. 455; Close vs. Glenwood Cemetery, 107 U. S. 477; 2 Supp. Ct. 267; Oregonian Ry. Co. vs. Oregon Ry. & Nav. Co., 23 Fed. 232; Granger's Business Assn. vs. Clark, 67 Cal. 634; 8 Pac. 445; South Bay Meadow Dam Co. vs. Gray, 30 Me. 547; Hassinger vs. Ammon, 160 Pa. St. 245; 28 Atl. 679; Bank of Shasta vs. Boyd, 99 Cal. 604; 34 Pac. 337.

Thus, the grantor in a deed in favor of a body professing to be a corporation and acting as such, and any person claiming under him, is estopped to deny the corporate existence of the grantee, for the purpose of defeating the deed.

Broadwell vs. Merritt (Mo. Sup.), 1 S. W. 855; Whitney vs. Robinson, 53 Wis. 309; 10 N. W. 512.

And the execution of a note or bond, payable to a body as a corporation is an admission by the maker or obligator of its corporate existence, which will estop him from denying it.

Stoutimore vs. Clark, 70 Mo. 471; Vater vs. Lewis, 36 Ind. 288; Brickley vs. Edwards, 131 Ind. 3; 30 N. E. 708; John vs. Bank, 2 Blackf. (Ind.) 367; 20 Am. Dec. 119; School Dist. No. 61 vs. Alderson, 6 Dak. 145; 41 N. W. 466; Booske vs. Ice Co., 24 Fla. 550; 5 So. 247.

In Swartwout vs. Michigan Air-Line R. Co., 24 Mich. 390, Judge Cooley said:—

“Where there is a corporation *de facto*, with no want of legislative power to its due and legal existence, when it is proceeding in the performance of corporate functions, and the persons are dealing with it on the supposition that it is what it professes to be, and the questions are only whether there has been exact regularity, and strict compliance with the provisions of the law relating to corporations, it is plainly a dictate alike of justice and public policy that, in controversies between the *de facto* corporation and those who have entered into contract relations with it, as corporators or otherwise, such questions could not be suffered to be raised.”

The rule thus announced by Judge Cooley has met with approval by courts of other States on other grounds. It has been held:—

“The rule relating to corporations *de facto* is not founded upon any principles of estoppel, as is sometimes assumed, but upon the broader principles of common justice and public policy. It would be unjust and intolerable if, under such circumstances, every interloper and intruder were allowed thus to take advantage of every informality or irregularity of organization.”

East Norway Lake Church vs. Froislie, 37 Minn. 447; 35 N. W. 260; Society Perum vs. Cleveland, 43 Ohio St. 481; 3 N. E. 357.

In passing upon this proposition, it was said by the Supreme Court of the United States:—

“Where a shareholder of a corporation is called upon to respond to a liability as such, and where a party has con-

tracted with a corporation and is sued upon the contract, neither is permitted to deny the existence or the legal validity of such corporation. To hold otherwise would be contrary to the plainest principles of reason and of good faith, and involve a mockery of justice. Parties must take the consequences of the position they assume. They are estopped to deny the reality of the state of things, which they have made appear to exist, and upon which others have been led to rely. Sound ethics require that the apparent, in its effects and consequences, should be as if it were real, and the law properly so regards it."

Casey vs. Galli, 94 U. S. 673.

"One who deals with a corporation as existing in fact is estopped to deny as against the corporation that it has been legally organized."

Close vs. Cemetery, 107 U. S. 477.

§ 196. Liability of Associates as Partners.

Where parties doing business are neither *de jure* nor *de facto* corporation and the question of their liability arises, it has been held that they may be liable as partners.

Eaton vs. Walker, 76 Mich. 579; 43 N. W. 638; Guckert vs. Hacke, 159 Pa. St. 303; 28 Atl. 249; Empire Mills vs. Alston Grocery Co., 15 (Tex. App.) 200, 505; 1 Shep. Cas. Corp. 64; Johnson vs. Corser, 34 Minn. 355; 25 N. W. 799; Kaiser vs. Bank, 56 Iowa 104; 8 N. W. 772; 1 Shep. Cas. Corp. 268; Pettis vs. Atkins, 60 Ill. 454; Bigelow vs. Gragory, 73 Ill. 197; Whipple vs. Parker, 29 Mich. 380; Eliot vs. Himrod, 108 Pa. St. 569; Garnett vs. Richardson, 35 Ark. 144; Hill vs. Beach, 12 N. J. Eq. 31; Abbott vs. Refining Co., 4 Neb. 416; Wecheelberg vs. Bank, 12 C. C. A. 56; 64 Fed. 90; Coleman vs. Coleman, 78 Ind. 346; Martin vs. Fewell, 79 Mo. 40; 1 Shep. Cas. Corp. 271; Smith vs. Warden, 86 Mo. 382; Williams vs. Hewitt, 47 La. Ann. 1076; 17 So. 497; Duke vs. Taylor, 37 Fla. 64; 19 So. 172.

On the other hand, courts of equal respectability have held that the remedy in such cases is against the particular persons transacting the business as agent upon the breach of an implied warrant of authority.

Fay vs. Noble, 7 Cush. (Mass.) 188; 1 Cumming Cas. Priv. Corp. 420.

"By professing to act for a corporation which does not exist, they put themselves in the position of a person who professes to act as the agent of another person who is really non-existent. Under a well-settled rule they are therefore personally bound to make good any undertaking which they assume in that character."

1 Thomp. Corp. 418, citing *Medill vs. Collier*, 16 Ohio St. 599; *Fay vs. Noble*, 7 Cush. (Mass.) 188; 1 *Cumming Cas. Priv. Corp.* 420.

§ 197. Powers of a Corporation.

The corporation at the present day has become such a fashionable mode of transacting business, that many of the restrictions that were supposed to exist surrounding its operations are no longer barriers to its progress in the transaction of business. As a general rule and as stated to be the correct rule was the one laid down by *Blackburn, Justice in Ashbury Ry. Carriage & Iron Co. vs. Riche*, L. R. 9 Exch. 224; 2 *Cumming Cas. Priv. Corp.* 34.

"I take it that the true rule of law is that a corporation at common law has, as an incident given by law, the same power to contract, and subject to the same restrictions, as a natural person has. And this is important when we come to construe the statutes creating a corporation, for if it were true that a corporation at common law has a capacity to contract to the extent given to it by the instrument creating it, and no further, the question would be, does the statute creating the corporation by express provision or necessary implication show an intention in the Legislature to confer upon this corporation capacity to make the contract? But if a body corporâte has, as incident to it, a general capacity to contract, the question is, Does the statute creating the corporation by express provision or necessary implication show an intention in the Legislature to prohibit, and so avoid, the making of a contract of this particular kind?"

However, in *Thos. vs. West Jersey R. Co.*, 101 U. S. 71, it was said:—

"We take the general doctrine to be in this country, though there may be exceptional cases and some authorities to the contrary, that the powers of corporations organized under legislative statutes are such, and such only, as those statutes

confer. Conceding the rule applicable to all statute that what is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others."

Whatever may be the rules laid down by the courts in the given case, it is quite apparent that corporations actually transact business on every line that individuals do and make every contract that individuals are able to make and consummate them in a like manner. No good reason is perceived why a corporation could not transact any business that an individual can so far as their capacity to do business is concerned in the line set forth and set out by their charter. Where would the injury arise in any contract if the contracting parties were corporations or one of them a corporation, and the agents of such corporation and the other contracting party were satisfied with the contracts thus made and consummated,—who would have the right to complain?

Corporations have none of the elements of sovereignty.
St. Louis vs. Weber, 44 Mo. 547.

At common law six powers were incident to corporations.
Rochester Ins. Co. vs. Martin, 13 Minn. 59; White's Bank vs. Toledo Ins. Co., 12 Ohio St. 601.

1. To have perpetual succession.
2. To sue and be sued and to grant and receive by their corporate name.
3. To purchase and hold lands and chattels.
4. To have a common seal.
5. To make by-laws for the government of the corporation.
6. The power of motion or removal of member.

Penobscot Boom Co. vs. Lampson, 16 Me. 24; Sherwood vs. Am. Bible Soc., 4 Abb. Ct. App. 227.

The legislatures are not bound by the rules of the common law in the formation of corporations. They can create a corporation in total disregard of the common law, but powers

thus granted must depend upon the enactment of the legislature.

Beaty vs. Mars Ins. Co., 2 Jones 109; Com. of Roads vs. McPherson, 1 Spear 218; Conro vs. Port Henry Iron Co., 12 Barb. 27.

The method thus prescribed by the Legislature must be strictly pursued.

Mathews vs. Spinker, 62 Mo. 329.

A corporation has all the rights incident to the right of contract within the provisions of its charter, can make any contract within the object of its creation, and deal like a natural person.

Binney's Case, 2 Bland 142; Reynolds vs. Comm'rs, etc., 5 Ohio 205; McCartee vs. Orph. Asy. Soc., 9 Cowen 437; Ketchum vs. Buffalo, 14 N. Y. 356; State vs. Madison, 7 Wis. 688; Callaway, etc. Co. vs. Clark, 32 Mo. 305; Central Gold Min. Co. vs. Platt, 3 Daly 263; Page vs. Heineberg, 40 Vt. 81; Galena vs. Corevith, 48 Ill. 423; Strauss vs. Eagle Ins. Co., 5 Ohio St. 59; Broughton vs. Manchester Water-works Co., 3 Barn & Ald. 1; Seibrecht vs. New Orleans, 12 La. 496; Brooklyn Gravel Road Co. vs. Slaughter, 33 Ind. 185; Weckler vs. First Nat. Bank, 42 Md. 581; Goodrich vs. Detroit, 12 Mich. 279; Bateman vs. Mayor, etc. 3 Hurl. & N. 322; Douglass vs. Virginia City, 5 Nev. 147.

The United States is a body politic and corporate.

Middlesex R. R. Co. vs. Boston R. R. Co., 115 Mass. 347; Pierce vs. Emery, 32 N. H. 504; Toledo Bank vs. Bond, 1 Ohio St. 622; United States vs. Maurice, 2 Brock 96; Cotton vs. United States, 11 How. 229.

§ 198. Mode of Contracting.

The corporation contracts precisely as a natural person does (except it uses its own name and signature), and it is not limited unless there is a limitation in its charter or by expressed provision of law.

Harborough vs. Shordlow, 7 Mees. & W. 87; 2 Eng. Railw. Cas. 253; White vs. New Orleans, 15 La. An. 667; Head vs. Ins. Co. 2 Cranch, 127; Baltimore vs. Reynolds, 20 Md. 1; Zottmen vs. San Francisco, 20 Cal.

390; *Pimento vs. San Francisco*, 21 *id.* 351; *Bladen vs. Philadelphia*, 60 *Pa. St.* 464; *N. Y. etc. R. R. Co. vs. Mayor, etc.*, 1 *Hilt.* 562; *Lowe vs. London, etc. Railw. Co.*, 14 *Eng. L. & Eq.* 18; *MsSpedon vs. Mayor, etc.*, 20 *How. Pr.* 395; 7 *Bosw.* 601; *Maher vs. City of Chicago*, 38 *Ill.* 266; *Abbott vs. Herman*, 7 *Me.* 118; *Abby vs. Billups*, 35 *Miss.* 618; *Frankfort Bridge Co. vs. City Frankfort*, 18 *B. Mon.* 41; *Gowan Marble Co. vs. Tarrant*, 73 *Ill.* 608; *N. Y. etc. R. R. Co. vs. Mayor, etc.*, 1 *Hilt.* 562; *Silliman vs. Fredericksburg, etc. R. R. Co.*, 27 *Gratt* 119.

Whenever a corporation is acting within the purpose of its charter it may enter into parol contracts by and through its agents, and when done they become express contracts of the corporation.

Fanning vs. Gregoire, 16 *How.* 524; *Fleckner vs. Bank of U. S.*, 8 *Wheat.* 338; *McCullough vs. Talladega Ins. Co.*, 46 *Ala.* 376; *Compare Trustees, etc. vs. Johnson*, 53 *Ind.* 273.

When an officer or agent is acting in the usual scope of his authority, it does not require any resolution or other action on the part of the corporation to enable him to transact its ordinary business.

Lime Rock Bank vs. Macomber, 29 *Me.* 564; *Eastman vs. Coos Bank*, 1 *N. H.* 23; *Consolidated Bresby. Soc. vs. Staples*, 23 *Conn.* 544.

It is no longer necessary in the ordinary and usual contracts of the corporation any more than it is on the part of the natural person to use a seal. When a natural person would have to use a seal, a seal would also have to be used by a corporation.

Bank of Columbia vs. Patterson, 7 *Cranch* 299; *Savings Bank vs. Davis*, 8 *Conn.* 191; *New Athens vs. Thomas*, 82 *Ill.* 259; *Watson vs. Bennett*, 12 *Barb.* 196; *Hamilton vs. New Castle R. R. Co.*, 9 *Ind.* 359; *Peterson vs. Mayor, etc.*, of *N. Y.* 449; *Missouri River, etc. R. R. Co. vs. Comm'rs*, 12 *Kan.* 482; *McCullough vs. Talladega Ins. Co.*, 46 *Ala.* 376; *San Antonio vs. Gould*, 34 *Tex.* 49; *Mauby vs. Long*, 3 *Lev.* 107; *Wells vs. Mayor, etc. Law R.*, 10 *C. P.* 402; *Bank of U. S. vs. Dandridge*,

12 Wheat. 64; *Austin vs. Guardians, etc.*, Law R. 9 C. P. 91.

The individual members of a corporation, however, can not bind the corporation, unless specially authorized to do so.

Soper vs. Buffalo, etc. R. R. Co., 19 Barb. 310; *Ruby vs. Abyssinian Soc.*, 15 Me. 306; *Regents of University vs. Williams*, 9 Gill. & J. 365.

§ 199. Contracts by Agents or Power of Attorney.

A power of attorney is an instrument in writing by virtue of which one person transacts business in the place or stead of another as an agent.

In *Porter vs. Hermann*, 8 Cal. 620, Field, J., said:—

“All attorneys in fact are agents, but all agents are not necessarily attorneys in fact; agent is the general term, which includes brokers, factors, consignees, shipmasters, and all classes of agents. By attorneys in fact are meant persons who are acting under a special power created by deed. It is true, in loose language, the terms are applied to denote all agents employed in any kind of business except attorneys-at-law, but in legal language they denote persons having a special authority by a deed.”

Hunt. vs. Rousmainer, 8 Wheat (U. S.) 174.

Powers of attorney receive a strict construction.

“All powers of attorney receive a strict interpretation, and the authority is never extended by intendment, or construction, beyond that which is given in terms, or is absolutely necessary for carrying the authority into effect, and that authority must be strictly pursued.”

Rossiter vs. Rossiter, 8 Wend. (N. Y.) 494; *Brantley vs. Insurance Co.*, 53 Ala. 554; *Bliss vs. Clark*, 16 Gray (Mass.) 60.

This rule was applied in:—

Rice vs. Tavernier, 8 Minn. 248; *Greve vs. Coffin*, 14 Minn. 345; *Berkey vs. Judd*, 22 Minn. 287.

A general power of attorney to transfer stock authorizes an agent to sign the stockholder's name to a transfer, but not to have a transfer made to himself.

Taft vs. Presidio, etc. Co., 84 Cal. 131 (1890); *Reversing*, 22 Pac. Rep. 485 (1889).

The corporation is liable if they allow the transfer to the attorney in fact.

Quay vs. Presidio, 82 Cal. 1.

Corporations may appoint agents by directors' votes or by implication, if there is nothing in the charter or by-laws to the contrary.

Power of attorney may be by parol or in writing, as oral or written powers are equally parol authority, such agents may sign their principal's name without a seal. An agent may only be clothed with oral authority, still he may bind his principal to written instruments.

Letters or power of attorney are to be strictly construed, as where general terms are used in relation to a particular subject, such terms must be construed to be subordinate and refer to that particular subject and not enlarge upon it, not encompass, nor include other subjects.

The power necessarily includes such means and authority as will enable the agent to carry the power into effect. Such an agent must sign the name of his principal, and then add his own name afterward together with the words "his agent," "his attorney" or "his attorney in act."

Powers of attorney may range from an oral authority to the most solemn general power of attorney, under seal to execute sealed instruments, such as deeds, mortgages and the like.

Corporation proxys are simply powers of attorney, where an agent is authorized to act in another's stead, with or without instruments. A proxy may contain a clause of substitution, and in such case the agent may appoint or delegate his power to another to act or vote in his stead.

§ 200. Elements of Power of Attorney.

1. The names of both the principal and the attorney in fact.
2. The duty imposed and mode of exercising it.
3. Whether the power is general or special and limitations.
4. The power of substitution and revocation.
5. Ratification and confirmation.

6. Signatures of principal and agents.

7. Attestation and acknowledgment of the power is to confer authority to make instruments under seal, otherwise not, signatures are sufficient.

8. Recording of power of attorney confers authority to execute sealed instruments.

For power of attorney for corporations, see—

Osborn vs. Bank U. S., 9 Wheat. (U. S.) 738; Bank of U. S. vs. Dandridge, 12 Wheat. (U. S.) 64; Clark vs. Corp. of Washington, 12 Wheat. (U. S.) 400; Bank of Metropolis vs. Guttschlick, 14 Pet. (U. S.) 19; Fleckner vs. Bank of U. S., 8 Wheat. (U. S.) 338; Bank of Columbia vs. Patterson, 7 Cranch (U. S.) 229; Essex Turnpike Corp. vs. Collins, 8 Mass. 202; Bristol Savings Bank vs. Keavy, 128 Mass. 298; Hutchins vs. Byrnes, 9 Gray (Mass.) 367; Pusey vs. N. J. W. L. R. Co., 14 Abb. Pr. N. S. (N. Y.) 434; Middleton vs. R. Co., 43 How. Pr. (N. Y.) 481; Danforth vs. Schoharie, etc. Co., 12 Johns (N. Y.) 227; Peterson vs. Mayor of N. Y., 17 N. Y. 449; Darst vs. Gale, 83 Ill. 136; Rockford, etc. R. Co. vs. Wilcox, 66 Ill. 417; Gowan Marble Co. vs. Tarrant, 73 Ill. 608; Adams Expr. Co. vs. Schlesinger, 75 Pa. St. 246; Kelsey vs. Nat. Bank, 69 Pa. St. 426; Atchinson, etc. R. Co. vs. Reeher, 24 Kan. 228; Flint vs. Clinton Co., 12 N. H. 430; Goodwin vs. Union Screw Co., 34 N. H. 378; Kiley vs. Forsee, 57 Mo. 390; Southgate vs. Atlantic, etc. R. Co., 61 Mo. 89; Union Min. Co. vs. Rocky Mt. Nat. Bank, 2 Colo. 248; Smiley vs. Mayor of Chattanooga, 6 Heisk (Tenn.) 604; Steel vs. Solid Silver, etc. Mining Co., 13 Nev. 486; Stanwood vs. Laughlin, 73 Me. 112; Lime R. Bank vs. Macomber, 29 Me. 564; Warren vs. Ocean Ins. Co., 16 Me. 439 s. c.; 33 Am. Dec. 674; Swazy vs. Union Mfg. Co., 42 Conn. 556; Vicksburg, etc. R. Co. vs. Ragdale, 54 Miss. 200; Legrand vs. Hampden S. College, 5 Munf. (Va.) 324; The Banks vs. Poitiaux, 3 Rand. (Va.) 143 s. c.; 15 Am. Dec. 706; Union Bank vs. Ridgeley, 1 Harr. & G. (Md.) 413; Elysville M. Co. vs. Okisko Co., 1 Md. Ch. 392; Ross vs. City of Madison, 1 Carter (Ind.) 281; Garvey vs. Colcock, 1 Nott. McC. (S. Car) 231; Buncombe Turnpike Co. vs. McCarson, 1 Dev. & B. (S. Car) 306; Petrie vs. Wright, 6 S. & M. (Miss.) 647; Baptist

Church vs. Mulford, 3 Halst. (N. J.) 182; Merrick vs. Burlington Co., 11 Iowa 75; Waller vs. Bank of Ky., 3 J. J. Marsh (Ky.) 201; Lee vs. Flemingsburg, 7 Dana (Ky.) 28; Muir vs. Canal Co., 8 Dana. (Ky.) 161; Poultney vs. Wells, 1 Aiken (Vt.) 180; Sheldon vs. Fairfax, 21 Vt. 102; San Antonio vs. Lewis, 9 Tex. 69.

The authority of a corporation or its officers to issue its promissory note need not be expressly given by its by-laws, or by formal resolution of the board of directors. Such authority can be inferred from the acquiescence of the corporation in, or the recognition by it, of the acts of its accredited officers in the regular course of its authorized business.

First Nat. Bank vs. North Miss. Coal, etc. Co., 86 Mo. 125.

The authority to appoint an agent need not be specifically mentioned in the charter.

Kitchen vs. Cape Girardeau R. Co., 59 Mo. 514; Old Colony R. Co. vs. Evans, 6 Gray (Mass.) 25 s. c.; 66 Am. Dec. 394.

The appointment of an agent by or for a corporation, as by a natural person, may be implied from a confirmation of his acts, or an acceptance of his services without objection; and after such confirmation or acceptance, the corporation can not evade payment for his services by denying the validity of his appointment.

Ala. Gr. So. R. Co. vs. Hill, 76 Ala. 303; Reynolds vs. Collins, 78 Ala. 94.

A contract between two corporations will not be void for lack of seals; but a court of equity will, if necessary, compel the parties to affix their seals.

Missouri, etc. R. Co. vs. Miami Co., 12 Kan. 482.

§ 201. Construction of Contracts.

Contracts made by the officers of a corporation will be presumed to have been made in pursuance of authority from the corporation.

Dean vs. Lamotte Lead Co., 59 Mo. 523.

When a corporation changes its name, but continues in the same general business with the same officers, it is responsible under the new name for all its previous debts.

Dean vs. Lamotte Lead Co., 59 Mo. 523.

§ 202. Power to Sue.

A corporation can sue in its corporate name only, and whether the contract was made by an agent makes no difference; the action must be brought in the name of the corporation, and even if the contract is made in the name of one of the officers, still the corporation must sue, and after change of the name, it must sue in the new name.

Curtiss vs. Murry, 26 Cal. 633; Norton vs. Hodges, 100 Mass. 241; Bradley vs. Richardson, 2 Blatchf. 343; Porter vs. Nekervis, 4 Rand 359; Dark vs. Houston, 22 Ga. 506; Mauney vs. Motz, 4 Fred. Eq. 195; Garland vs. Reynolds, 20 Me. 45; Commercial Bank vs. French, 21 Pick. 486; Myers vs. Machado, 6 Abb. Pr. 198; Bundy vs. Birdsall, 29 Barb. 31; Leonardsville Bank vs. Willard, 25 N. Y. 574; Lowenthal vs. Wiseman, 56 Barb. 490; Brittain vs. Newland, 2 Dev. & B. Eq. 363; Warren Academy vs. Starrett, 15 Me. 443; Haynes vs. Covington, 13 Smedes & M. 408; Timms vs. Williams, 3 Ad. & E. N. S. 413; Madison College vs. Burke, 6 Ala. 494; Gould vs. Sub-district No. 3, etc., 7 Minn. 203; Mayor, etc. of Colchester vs. Seaber, 3 Burr. 1866; Eaton, etc. R. R. Co. vs. Hunt, 20 Ind. 457; Racine County Bank vs. Ayers, 12 Wis. 512; Trustees, etc. vs. Schwagler, 37 Iowa 577.

BONDS.

§ 203. One Character of Corporate Contracts.

In the absence of the restrictions in the charter of the corporation, if there be any, a corporation has the power to issue bonds. It is germane to its existence. They may create a debt in any manner that they see fit if this is within the purpose or scope of their business.

"A bond is merely an obligation under seal. A corporation having the capacity to sue and be sued, the right to make contracts, under which they may incur debts, and the right to make and use a common seal, a contract under seal is not

only within the scope of its powers, but was originally the usual, and peculiarly appropriate form of corporate agreement."

Com. vs. Smith, 10 Allen (Mass.) 448; 1 Cumming Cas. Priv. Corp. 331; W. D. Smith, Cas. Corp. 127; Shep. Cas. Corp. 111; White Water Valley Canal Co. vs. Vallette, 21 How. 414; Barry vs. Exchange Co., 1 Sandf. Ch. (N. Y.) 280; Curtiss vs. Leavitt, 15 N. Y. 9.

Ordinarily the bonds issued by an industrial or railroad corporation are negotiable instruments, especially if they are intended for sale in the open market and drawn payable to bearer.

Mercer County vs. Hacket, 1 Wall. 83, 95; Pendleton Co. vs. Amy, 13 Id. 297; Haven vs. Grand Junction R. Co., 109 Mass. 88; Morris Canal Co. vs. Lewis, 12 N. J. Eq. 323; Carr vs. Lefevre, 27 Pa. St. 418; Bunting vs. Camden, etc. R. R. Co., 81 Id. 254; Virginia vs. Maryland, 32 Md. 547; Blake vs. Livingston Co., 61 Barb. 149; New Albany Plank Road Co. vs. Smith, 23 Ind. 353; Soc. for Savings vs. New London, 29 Conn. 174.

The obligations of a corporation upon its bonds are in general the same as those of natural persons.

Brand vs. Donaldsonville, 28 La. An. 558; Hill vs. Manchester, etc. Water Works Co., 2 Barn. & Ald. 544; 5 Barn. & Adol. 866; 2 Nev. & M. 573; Phila., etc. R. R. Co. vs. Lewis, 33 Pa. St. 33.

The coupons attached to the bond are independent contracts for the payment of interest when they are detached, and they are in law treated and regarded as currency blank bills or as the original bonds, and the possession of such a contract or coupon is presumptive evidence of the right to receive the interest covered by them.

Thompson vs. Lee County, 3 Wall. 327; Cromwell vs. County of Sac., 94 U. S. 351, 362; San Antonio vs. Lane, 32 Tex. 405; Spooner vs. Holmes, 102 Mass. 503; Underhill vs. Trustees, 17 Cal. 172; Morris Canal Co. vs. Fisher, 1 Stockt. Ch. 667; Evertson vs. Nat. Bank, 66 N. Y. 14; Murray vs. Lardner, 2 Wall. 110; Commonw. vs. Emigrant, etc. Bank, 98 Mass. 12; Clarke vs. Janes-

ville, 1 Biss. 98; McCoy vs. Washington County, 3 Wall. Jr. 381; Burroughs vs. Richmond County, 65 No. Car. 234; Nat. Exchange Bank vs. Hartford, etc. R. R. Co., 8 R. 1. 375; Cicero vs. Clifford, 53 Ind. 191.

The power to issue bonds and the manner in which they shall be issued depends upon the statutes under which they are issued, and if there is a mode or manner of issuing bonds provided by statute, that mode must be carefully followed, else the bond will be invalid.

Com vs. Smith, 10 Allen (Mass.) 448; 1 Cumming, Cas Priv. Corp. 331; W. D. Smith, Cas. Corp. 127; Shep. Cas. Corp. Ill.

Many of the States have restrictive provisions upon the issue of bonds, and they are generally about as follows:—

“No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void.”

These provisions have been so destructive of the rights of innocent holders and bona fide purchasers that the courts are very reluctant to give them effect, and they have been reduced to the point of where the issue has been entirely fictitious. They do not affect the customary methods of starting a corporate enterprise by the issue of stock and bonds for the payment and construction of corporate works.

1 Cook on Corp., 47, p. 127.

At common law a corporation may issue its bonds at less than their par value.

Gamble vs. Queens County Water Co., 123 N. Y. 91, where the court, after speaking with reference to the stock of the company, proceeded to say:—

“A different rule, however, prevails in regard to the bonds of a corporation. An extended discussion of the question is not needful. We think a corporation has the power to issue its bonds at less than par. So far as this point is concerned, it is not restricted to an issue only upon payment to the company of the par value of the bonds, either in money or property for its use.”

To same effect, *Lyceum vs. Ellis*, 57 N. Y. Super. Ct. 532.

The holder of a majority of the stock of a railroad company may legally cause its bonds to be issued to himself at ninety cents on a dollar in payment of a debt due him.

Gloninger vs. Pittsburgh, etc. R. R., 139 Pa. St. 13.

A corporation may issue bonds at eighty cents on the dollar.

The Vigilancia, 68 Fed. Rep. 781.

A corporate creditor can not complain that a company sold its bonds to some of the directors at a discount of twenty-five per cent.

Bank of Toronto vs. Cobourg, etc. Ry., 10 Ont. (Can.) 376.

Debentures may be issued at a discount, even sixty per cent discount being upheld in *Webb vs. Shropshire Ry.*, 3 Ch. 307.

See also *Handley vs. Stutz*, 139 U. S. 417; *Christensen vs. Illinois, etc. Co.*, 52 Hun. 478.

But an agreement of a corporation to issue bonds to a subscriber as a "bonus" was held to be void, and the subscription was enforced, in *Morrow vs. Nashville, etc. Co.*, 87 Tenn. 262. In *Clafin vs. South Carolina R. R.*, 8 Fed. Rep. 118, bonds were issued at the rate of eighty cents on the dollar, and no question was raised as to the validity of the issue. In England debentures may be issued at a discount in cash. *Campbell's Case*, L. R. 4 Ch. D. 470, where the issue was to a director; *Re Regent's, etc. Co.*, L. R. 3 Ch. D. 43, where the pledge of debentures shared equally with purchasers, on winding up, to the extent of the pledge; *Re Anglo-Danubian, etc. Co.*, L. R. 20 Eq. 339.

Re Inns, etc. Co., L. R. 6 Eq. 82.

Where railroad bonds are issued and paid for in Confederate currency, they can be enforced only to the extent of the

purchasing value of the currency thus paid, at the time of the purchase, with interest upon that value.

Spence vs. Mobile, etc. Ry., 79 Ala. 576.

It is illegal to issue municipal bonds at a discount. In *Sherlock vs. Winnetka*, 68 Ill. 530, the court held a sale of municipal bonds below par to be unlawful.

Generally a large amount of stock is issued with bonds in payment for property or construction work of some character. After the insolvency of the company, the bonds having passed into the hands of bona fide holders, if an attempt is made to hold the contractors liable for the par value of the stock on the theory it has never been paid for. The weight of authority in such cases holds the contractors are not liable for the stock whether they have disposed of it or not.

Where all the stock and a large quantity of bonds are issued by a railroad corporation to its contractor in payment for the construction of the road, the contractor is not liable to corporate creditors on the stock, even though the bonds were a sufficient consideration for building the road, unless corporate creditors prove that the stock at the time of its issue had a real or market value.

"If, when disposed of by the railroad company, it was without value, no wrong was done to creditors."

Even the Missouri Constitution and statutes do not change this rule.

Fogg vs. Blair, 139 U. S. 118; *Van Cott vs. Van Brunt*, 82 N. Y. 535.

The doctrine laid down in *Van Cott vs. Van Brunt* was approved in *Coe vs. East, etc. R. R.*, 52 Fed. Rep. 531. It is legal for a railroad company to issue bonds and stock in payment for the construction of its road. If all the parties assent, no one can complain.

"As the stock was issued as a part of the consideration for construction, it can not be said that it was taken without value given." "The par value is immaterial." "The fact that they were created for an expenditure less than the par value of the aggregate."

"Issues of capital stock and bonds does not affect the question at all."

Barr vs. New York, etc. R. R., 125 N. Y. 263.

At common law, even though a railroad corporation issues to its president nearly \$1,400,000 of mortgage bonds and \$700,000 of stock for construction work which costs only about \$700,000, nevertheless the purchasers of such stock and bonds can not cause suit to be brought by the corporation, after the foreclosure of its property, and hold him liable. The court held that inasmuch as the stock had no market value no harm was done. The court said:—

"Nor is it true that those took the stock and bonds, and paid for them, were cheated by Kase, in any real sense of the word. Is any man of ordinary judgment cheated when he pays seventy-five or eighty cents on the dollar for a seven or eight per cent railroad bond, receiving with the bond a gift of the stock in many cases almost equaling the face value of the bond? Such a purchaser knew, just as Kase knew, that the value of the paper was speculative. If Kase lived, if he expended the money in construction, if he completed the road, if the event then proved it to be a meritorious enterprise (that is, if it received and developed traffic sufficient to pay operating expenses, fixed charges, and reasonable dividends), the speculative buyer would probably more than double his money. If any one of the contingencies did not happen, the buyer lost; but he was not cheated, except in the sense that all who bet on the happening of an uncertain event, and lose, are cheated."

Danville, etc. R. R. vs. Kase, 39 Atl. Rep. 301 (Pa.).

In this case stock and bonds had been issued by the corporation for land, but the stock had no market value, and an effort was made to hold the vendor of the land liable for the par value of the stock and the actual value of the bonds less the actual value of the land. The court refused, and said:—

"We do not concur with the master in his conclusion that Kase should refund to the company a large sum of money in excess of the profit because of the stock received by him in the transaction. He finds as a fact that the stock was then, and is now, worthless. A court of equity does not perform the duties of a court of quarter session, does not order restitu-

tion of that which is valuable, and also impose a heavy fine on the guilty. The company has the land, Kase has a profit of \$111,000 bonds, and no profit in the worthless stock. He should account for the bonds alone."

Inasmuch, however, as the president secretly owned land in the name of another person, and caused the corporation to purchase it and issue stock and bonds in payment, without disclosing his interest in the land, he was held liable to the corporation for the difference between the actual market value of the stock and bonds and the actual value of the land.

Danville, etc. R. R. vs. Kase, 39 Atl. Rep. 301 (Pa.).

Although \$1,500,000 of stock, issued as fully paid, and \$1,500,000 in bonds, are issued for the construction of a work which cost less than \$1,500,000, yet an attorney who took part in the transaction can not, as a creditor of the corporation, claim that the stock was not fully paid.

Ten Eyck vs. Pontiac, etc. R. R., 72 N. W. Rep. 362 (Mich.).

In Northwestern, etc. Ins. Co. vs. Cotton, etc. Co., 46 Fed. Rep. 22, however, the court held that where property worth \$157,000 is turned into a corporation for \$200,000, payable in \$125,000 of stock and \$75,000 of bonds, the creditors of the company might hold the parties liable on the stock as though it were unpaid stock, and the creditor is presumed not to have known of the transaction when he contracted the debt. Where a railroad worth \$112,000 is sold to a new corporation for \$1,120,000 of bonds and all its capital stock, the transaction is fraudulent. The bondholders may obtain judgment against the company on their bonds, and then compel the stockholders to pay the full par value of their stock.

Preston vs. Cincinnati, etc. R. R., 36 Fed. Rep. 54.

In Lloyd vs. Preston, 146 U. S. 630, aff'g 36 Fed. Rep. 54, where the owner of a railroad sold it to a newly organized corporation for stock and bonds, the par value of which was fifty times the real value of the railroad, the bondholders and other creditors who obtained judgment against the corporation, the

execution being returned unsatisfied, may hold the party receiving the stock liable thereon, on the ground that the subscription price of such stock has never been paid. The court said:—

“The entire organization was grossly fraudulent from first to last, without a single honest incident or redeeming feature.”

The court also said:—

“It having been found on convincing evidence, that the over-valuation of the property transferred to the railway company by Harper in pretended payment of the subscriptions to the capital stock, was so gross and obvious as, in connection with other facts in the case, to clearly establish a case of fraud, and to entitle bona fide creditors to enforce actual payment by the subscribers, it only remains to consider the effect on the defenses set up.”

The court will sustain issues of bonds even though the value of the property or construction work is far less than the value of the bonds.

In *White Water, etc. Co. vs. Vallette*, 21 How. 414, the court held that bonds issued in payment for the completion of a canal were legal, although the sum for which they were issued was largely greater than the estimated cost of the work. In that case the bonds were issued at about fifty cents on the dollar. Railroad bonds issued to pay for the construction of the road are not rendered invalid by proof that the road could have been, or was, constructed for less than the amount of such bonds, if the contract for its construction was fairly made and carried out, and called for the amount of bonds actually issued, and no fraud is charged in the inception or execution of such contract. Such a question, however, may be raised before the master upon the distribution of the fund realized upon foreclosure.

Farmers' L. & T. Co., vs. Rockaway Valley R. R., 69 Fed. Rep. 9.

Even though a party acquires all the stock of a corporation, amounting to \$1,500,000, and then through dummy directors issues \$3,500,000 additional stock and \$4,000,000 of

mortgage bonds to himself, and then proceeds to sell the stock and bonds to the public, yet a person who purchases some of the stock can not file a bill in equity against the corporation to set aside the transaction and to ascertain what part of his stock is legal. His remedy is at law for damages, or he may repudiate and recover back his money.

"It is elementary that the court is possessed of no power to make a new contract between parties entirely distinct and different from the contract that they have entered into."

Church vs. Citizens' Street Ry., 78 Fed. Rep. 526.

A delivery of bonds as payment in advance for services to be rendered in selling other bonds can not be rescinded, where by subsequent agreement a loan with the bonds as collateral was negotiated, the bonds to be subsequently sold.

American L. & T. Co. vs. Toledo, etc. Ry., 47 Fed. Rep. 343; aff'd, Burke vs. American L. & T. Co., 155 U. S. 534.

The plan of issuing large quantities of stocks and bonds of a railroad company to a contractor, the bonds being all "water," is declared illegal in Central Trust Co. vs. New York, etc. R. R., 18 Abb. N. Cas. 381, 395, holding also that the full amount of the bonds can be claimed only by bona fide holder without notice, and that the other bonds will be paid only in proportion to the actual value of the property given to the company for them. The celebrated case of Columbus, etc. Ry. vs. Burke is in point here. It appears that in July, 1881, Burke purchased the entire capital stock (except seven shares which seem to have been lost) of three coal-carrying railroad companies in Ohio and consolidated them. He owned also the stock of another coal and railroad company. Accordingly, he caused the consolidated company to issue \$8,000,000 of its mortgage bonds in purchase and payment for the stock of the coal and railroad company, which was worth less than \$1,500,000. He then sold the bonds and kept the proceeds. The bonds recited on their face that they were for double tracking, equipment, and improvement purposes. No default was ever made on the bonds. They passed into bona fide hands.

The consolidated company also passed into their hands. In 1887, or thereabouts, the company commenced suit against Burke and others to compel an accounting and to reach the stock of the company, which Burke had paid for out of the proceeds of the \$8,000,000 of the bonds. A preliminary injunction against his transferring the stock was obtained, and his motion to dissolve this injunction was denied.

Columbus, etc. Ry. vs. Burke, 19 Week. L. Bull. 27 (Ohio).

Subsequently the case was withdrawn from the courts and submitted to three arbitrators. These arbitrators decided in 1888 that the company had no remedy.

Columbus, etc. Ry. vs. Burke, 20 Week. L. Bull. 287.

Then a bona fide holder of some of the bonds brought a suit in equity in the New York courts to compel Burke to account to the corporation for the value of the bonds so taken by him. A demurrer to the bill was overruled.

Belden vs. Burke, N. Y. L. J., Nov. 3, 1890.

Upon the trial of this case, however, the suit was dismissed, chiefly on the ground that the plaintiff bondholder was estopped by the fact that the chain of title of his bonds ran through the guilty parties themselves.

Belden vs. Burke, 20 N. Y. Supp. 320.

This decision was reversed by the general term, 72 Hun. 51. The case then went to the New York Court of Appeals. In a suit at law by the company to compel the associates of Burke—the parties to whom he sold the bonds—to pay over the proceeds of the bonds, the court directed a verdict for the defendants, chiefly on the ground that all the stockholders had assented to the transaction.

Columbus, etc. Ry. vs. Lanier, N. Y. L. J., Feb. 4, 1893.

Where a corporation agrees to pay for railway bonds, and does not fulfil, the vendor may hold it liable for the full par value of the bonds, although they are less than par.

Parties owning real estate may convey it to a corporation

formed for that purpose and take bonds in payment, and the transaction is perfectly valid.

"No just criticism is possible either upon the legality or morality of the transaction. Evidence was given to show that the land conveyed was not worth the sum secured, but that is a totally immaterial fact. Whatever the price, it wronged no one, and could wrong no one."

Seymour vs. Spring Forest Cem. Assoc., 144 N. Y. 33.

The corporation may issue bonds to its stockholders as a dividend in lieu of cash where it has used its surplus earnings to improve its property.

Wood vs. Lary, 124 N. Y. 83; *S. C.*, 47 Hun. 550; *State vs. Baltimore, etc. Co.*, 6 Gill (Md.) 363; *Merz vs. Interior Conduit, etc. Co.*, 87 Hun. 430; *S. C.*, 46 N. Y. Supp. 243; *Chaffee vs. Rutland R. R.*, 55 Vt. 110, 139; *Virginia, etc. Co. vs. Mercantile Trust Co.*, 12 N. Y. Supp. 529; *Schilling, etc. Co. vs. Schneider*, 110 Mo. 83; *Boston, etc. Co. Bankers', etc. Co.*, 36 Fed. Rep. 288; *United Lines Tel. Co. vs. Boston, etc. Co.*, 147 U. S. 431; *Pusey vs. New Jersey R. R.*, 14 Abb. Pr. (N. S.) 434; *Memphis, etc. R. R. vs. Dow.*, 120 U. S. 287; *Swift vs. Smith*, 65 Md. 428; *Little Garabrant*, 90 Hun. 404, aff'd, 153 N. Y. 661; *Osborn vs. Montelac Park*, 89 Hun. 167; *Buffalo Loan, etc. Co., Medina Gas, etc. Co.*, 12 N. Y. App. Div. 199; *Millsaps vs. Merchants', etc. Bank*, 71 Miss. 361; *Solomon Co., vs. Barber*, 49 Pac. Rep. 524 (Kan.); *Long Island L. & T. Co. vs. Columbus, etc. Ry.*, 65 Fed. Rep. 455; *Farmers' L. & T. Co. vs. Forest Park, etc. R. R.*, 65 Fed. Rep. 882; *Germania, etc. Co. vs. Boynton*, 71 Fed. Rep. 797; *Re Brockaway Mfg. Co.*, 89 Me. 121; *Washington Mill Co. vs. Sprague Lumber Co.* 52 Pac. Rep. 1067 (Wash.).

§ 204. Acknowledgments.

Acknowledgments to instruments of writing were unknown at the common law. They arose in legislative enactments for the protection of creditors and purchasers. The object of acknowledgments are twofold. First to entitle a deed or other instrument, to record in the proper required archives of the State or country where the property is situate. Second, to make the instrument competent evidence

without further proof of its execution. It has received a severe scrutiny by the courts, many times falling far short of their sanction or approval, as* will be hereafter shown in this chapter. Twofold object of acknowledgment.

Doe vs. Smith, 3 McLean (U. S.) 362; Griesler vs. McKennon, 44 Ark. 517; Fogarty vs. Finlay, 10 Cal. 239; 70 Am. Dec. 714; Clark vs. Troy, 20 Cal. 219; Landers vs. Bolton, 26 Cal. 393; Wetherbee vs. Dunn, 32 Cal. 106; Stanton vs. Button, 2 Conn. 527; Reed vs. Kemp, 16 Ill. 445; Allen vs. Vincennes, 25 Ind. 531; State vs. Dufour, 63 Ind. 567; Harrington vs. Fortner, 58 Mo. 408; Burbank vs. Ellis, 7 Neb. 156; Wark vs. Willard, 13 N. H. 389; Jackson vs. Shepard, 2 Johns. (N. Y.) 77; Johnson vs. Bush, 3 Barb. Ch. (N. Y.) 207; Elwood vs. Klock, 13 Barb. (N. Y.) 50; Foster vs. Dennison, 9 Ohio 121; Woolfolk vs. Graniteville Mfg. Co., 22 S. Car. 332; Wiggins vs. Fleishel, 50 Tex. 57; Pitkin vs. Leavitt, 13 Vt. 379; Hutchinson vs. Rust, 2 Gratt. (Va.) 394; Hinchliff vs. Hinman, 18 Wis. 139; Ward vs. Fuller, 15 Pick. (Mass.) 185; Loree vs. Abner, 6 C. C. A. 302; 6 U. S. App. 649; Bradford vs. Dawson, 2 Ala. 203; Pierce vs. Brown, 24 Vt. 165.

§ 205. Acknowledgment Essential to Admit Deed to Record.

Loree vs. Abner, 6 C. C. A. 302; 6 U. S. App. 649; Haskill vs. Sevier, 25 Ark. 153; White vs. Magarahan, 87 Ga. 217; Doe vs. Naylor, 2 Blackf. (Ind.) 32; Bever vs. North, 107 Ind. 544; Westhafer vs. Patterson, 120 Ind. 459; 16 Am. St. Rep. 330; Brinton vs. Seevers, 12 Iowa 389; Meskimen vs. Day, 35 Kan. 46; Pidge vs. Tyler, 4 Mass. 541; Buell vs. Irwin, 24 Mich. 145; People vs. Marion, 29 Mich. 31; Hughes vs. Morris, 110 Mo. 306; Powell's Appeal, 98 Pa. St. 403; M'Iver vs. Robertson, 3 Yerg. (Tenn.) 84; Deen vs. Wills, 21 Tex. 642; Holliday vs. Cromwell, 26 Tex. 188; Coffey vs. Hendricks, 66 Tex. 676; Stramler vs. Coe, 15 Tex. 211; Gordon vs. Collett, 107 N. Car. 362; Tarpey vs. Deseret Salt Co., 5 Utah 205.

The chief object of a certificate of acknowledgment is to admit the deed to registry.

Black vs. Gregg, 58 Mo. 565.

Alabama Act of 1828.

Hobson vs. Kissam, 8 Ala. 357; Herbert vs. Hanrick, 16 Ala. 581.

Acknowledgment not necessary for recording when execution is otherwise proved.

Kimmarle vs. Houston, etc. R. Co., 76 Tex. 686.

Record essential to admission in evidence.

Keichline vs. Keichline, 54 Pa. St. 75; M'Dill vs. M'Dill, 1 Dall. (Pa.) 63; Hamilton vs. Galloway, Dall. (Pa.) 93; Wilson vs. Spring, 38 Ark. 181; Watson vs. Billing, 38 Ark. 278; 42 Am. Rep. 1.

Record of acknowledgment not essential.

Chandler vs. Bailey, 89 Mo. 641; Gardner vs. Porr Blakely Mill Co., 8 Wash. 1.

Duly acknowledged deed admissible in evidence without further proof of execution.

Houghton vs. Jones, 1 Wall. (U. S.) 702; New York Pharmical Assoc. vs. Tilden, 14 Fed. Rep. 740; Barnett vs. Proskauer, 62 Ala. 486; Bradford vs. Dawson, 2 Ala. 203; Landers vs. Bolton, 26 Cal. 393; Wetherbee vs. Dunn, 32 Cal. 106; McGinnis vs. Egbert, 8 Colo. 41; Stanton vs. Button, 2 Conn. 527; L'Engle vs. Reed, 27 Fla. 345; Post vs. Springfield First Nat. Bank, 138 Ill. 559; Schroder vs. Kellar, 84 Ill. 46; Allen vs. Vincennes, 25 Ind. 531; Doe vs. Naylor, 2 Blackf. (Ind.) 32; Simpson vs. Mundee, 3 Kan. 172; McCauslin vs. McGuire, 14 Kan. 234; Wilkins vs. Moore, 20 Kan. 538; Hutchins vs. Dixon, 11 Md. 29; Ferris vs. Boxell, 34 Minn. 262; Ellingbøe vs. Brakken, 36 Minn. 156; McMillan vs. Edfast, 50 Minn. 414; Romer vs. Conter, 53 Minn. 171; Morris vs. Wadsworth, 17 Wend. (N. Y.) 103; Blackman vs. Riley, 63 Hun. (N. Y.) 521; Duncan vs. Duncan, 1 Watts (Pa.) 322; Parker vs. Chancellor, 73 Tex. 475; Hutchinson vs. Rust, 2 Gratt. (Va.) 394.

It had its origin in the desire to prevent fraud and litigation in the establishment of land titles and to provide reliable evidence of transfers.

Origin of the practice of taking acknowledgments.

French vs. Gray, 2 Conn. 92; Gould vs. Howe, 131 Ill.

490; *Pidge vs. Tyler*, 4 Mass. 541; *Shaw vs. Poor*, 6 Pick (Mass.) 86; 17 Am. Dec. 347; *Moore vs. Thomas*, 1 Oregon 201; *Saunders vs. Hackney*, 10 Lea (Tenn.) 194; *Taylor vs. Harrison*, 47 Tex. 454; 26 Am. Rep. 304.

In absence of statute,—acknowledgment not necessary.

Stevens vs. Griffith, 3 Vt. 448; *Hill vs. Greenwood*, 23 U. C. Q. B. 404.

The acknowledgment of an instrument is not an essential part of the instrument, and is only placed upon the record to give constructive notice. Persons with actual notice are as much bound by the instrument as if it were acknowledged and recorded.

Unacknowledged deed good between parties.

Wood vs. Owings, 1 Cranch (U. S.) 239; *Doe vs. Smith*, 3 McLean (U. S.) 362; *Richards vs. Randolph*, 5 Mason (U. S.) 115; *Sicard vs. Davis*, 6 Pet. (U. S.) 124; *Hepburn vs. Dubois*, 12 Pet. (U. S.) 345; *New Hampshire Land Co. vs. Tilton*, 19 Fed. Rep. 73.

§ 206. Acknowledgments Intended to Protect Purchasers and Creditor.

In *Sicard vs. Davis*, 6 Pet. (U. S.) 124 the court by Marshall, C. J. said:—

“The acknowledgment of the proof which may authorize the admission of the deed to record, and the recording thereof, are provision which the law makes for the security of creditor and purchasers. They are essential to the validity of the deed, as to persons of that description, not as to the grantor. His estate passes out of him and vests in the grantee so far as respects himself, as entirely, if the deed be in writing, sealed and delivered, as if it be also acknowledged or attested and proved by three subscribing witnesses, and recorded in the proper court. In a suit between them, such a deed is completely executed, and would be conclusive, although never admitted to record, nor attested by any subscribing witness. Proof of sealing and delivery would alone be required, and the acknowledgment of the fact by the party would be sufficient proof of it.”

See also *Hopping vs. Burman*, 2 Greene (Iowa) 39.

§ 207. Acknowledgments General Requisites.

1. Acknowledgment generally must state, first the place where taken.

State of.....,county, ss.;

State of.....,county, sct.;

State of.....,county, to wit:

State of....., county of....., city of....., ss.;

State of....., city (or department, district, parish, town, township, or other place where the officer takes the acknowledgment, of ss.;

Territory of....., city, etc., of....., ss.;

Province of....., Dominion of....., etc.;

Port of....., Empire of....., etc.

SS. is an abbreviation used in that part of a record, pleading or affidavit, called the "statement of the venue." Commonly translated or read, "to wit," and supposed to be a contraction of "scilicet."

Black's Law Dictionary, p. 1117.

2. The commencement of the acknowledgment or certificate.

I certify that, etc.

I do hereby certify that on this day of, in the yearbefore the subscriber, a, etc.

On this day of personally appeared before me, a (giving your official title) in and for said county, came (or personally appeared) G. R., etc.

On this day of, before me (the undersigned) O. R., a (give official title) in and for said county (or city), etc., came (or personally appeared) G. R., etc.

I, O. R., a in and for said county (or city, etc.) do hereby certify unto all whom it may concern that G. R. did this day appear before me, etc.

Be it remebered, that on this day of, before me, O. R., a (stating the name of his office) in and for said county, the grantors, G. N. T. R. and R. S., etc.

Boston, July 4, 1876, then personally appeared the above G. R., etc.

3. The subject matter of the acknowledgment.

4. The witnessing or the affirmation clause.

Given under my hand and seal of office;

Given under my hand and seal this day of;

In testimony whereof, I have hereunto set my hand and (official or notarial) seal, the day and year last above written (or, the day of);

In testimony whereof, I have caused the seal of (the Court) to be affixed (at) thisday of;

In witness whereof, etc.

5. The signature of the officer or prothonotary.

(L. S.) M. R., Mayor of

J. P., Justice of the Peace. (Seal).

(L. S.) N. P., Notary Public.

(L. S.) P. O., Presiding Officer of (state what).

(L. S.) C. C., Clerk of the Court.

(L. S.) J. J., Judge of the Court.

(L. S.) C. D., Commissioner of deeds for the state of

(L. S.) C. L., Consul of the United States of America resident at

6. Official seal of the officer, if he has one.

7. Date of the expiration of the officer's commission, if the statute requires it, such as the commission of notary publics.

Acknowledgment of deeds and other instruments by corporations are like those of individuals in their essential elements, but a corporation being an invisible person acting by and through agents, its acknowledgments must be done by those officers and representatives of the corporation who have authority to execute its contracts.

Hopper vs. Lovejoy, 47 N. J. Eq. 573; Lovett vs. Steam Saw Mill Assoc., 6 Paige (N. Y.) 54; New Haven Sav. Bank vs. Davis, 8 Conn. 191; Morris vs. Keil, 20 Minn. 531; Evans vs. Lee, 11 Nev. 194; Bason vs. King's Mountain Min. Co., 90 N. Car. 417.

As said by Judge Story:—

“Anciently it seems to have been held that corporations could not do anything without deed. Afterward the rule seems to have been relaxed, and they were, for convenience's sake, permitted to act in ordinary matters without deed,—as to retain a servant, cook, or butler,—and gradually this relaxation widened to embrace other objects. At length it seems to have been established that, though they could not contract

directly, except under their corporate seal, yet they might, by mere vote or other corporate act, not under their corporate seal, appoint an agent, whose acts and contracts, within the scope of his authority, would be binding on the corporation. . . . The technical doctrine that a corporation could not contract except under its seal, or, in other words, could not make a promise, if it ever had been fully settled must have been productive of great mischiefs. Indeed, as soon as the doctrine was established that its regularly appointed agent could contract in their name without seal, it was impossible to support it; for otherwise the party who trusted such contract would be without remedy against the corporation. Accordingly, it would seem to be a sound rule of law that, wherever a corporation is acting within the scope of the legitimate purposes of its institution, all parol contracts made with its authorized agents are express promises of the corporation; and all duties imposed upon them by law, and all benefits conferred at their request, raise implied promises for the enforcement of which an action may well lie."

Bank of Columbia vs. Patterson, 7 Cranch. 299; *Hall vs. Mayor of Swansea*, 5 Q. B. 526; *Jefferys vs. Gurr*, 2 Barn. & Adol. 833; *Seagraves vs. Alton*, 13 Ill. 366; *Trustees vs. Ogden*, 5 Ohio 23.

The rule of the common law as expressed by Judge Story and its modification has not abated the rule that where an individual would be compelled to execute a contract under seal, still the corporation must execute such a contract under seal, and the party to affix the corporate seal to an instrument is the proper party to make the acknowledgment to that instrument.

Acknowledged by officer affixing seal.

Kelly vs. Calhoun, 95 U. S. 710; *Murphy vs. Welch*, 128 Mass. 489; *Merrill vs. Montgomery*, 25 Mich. 73; *Bowers vs. Hechtman*, 45 Minn. 238; *Lovett vs. Steam Saw Mill Assoc.*, 6 Paige (N. Y.) 54; *Sheehan vs. Davis*, 17 Ohio St. 571; *Jinwright vs. Nelson* (Ala., 1895), 17 So. Rep. 91; *Johnson vs. Bush*, 3 Barb. Ch. (N. Y.) 207; *Isham vs. Bennington Iron Co.*, 19 Vt. 230.

In *Bowers vs. Hechtman*, 45 Minn., 238, the court by Mitchell, J., said:—

"The officer or agent who, in behalf of the corporation,

affixes the common seal to an instrument, is, in the absence of any statutory provision, deemed the party executing it. He also stands in the relation of a subscribing witness to the execution of the deed by the corporation, and is the proper party to be examined or to make affidavit to prove that the seal affixed by him was the corporate seal, and that it was affixed by authority of the board of directors."

Acknowledgments of contracts may be made by the president, vice-president, secretary, treasurer, cashier of bank or other authorized officers and agents of the corporation.

Sawyer vs. Cox, 63 Ill. 130; Fitch vs. Lewiston Steam Mill Co., 80 Me. 34; Frostburg Mut. Bldg. Assoc. vs. Brace, 51 Md. 508; Merrill vs. Montgomery, 25 Mich. 73; Gray vs. Waldron, 101 Mich. 612; Bowers vs. Hechtman, 45 Minn. 238; Missouri Fire Clay Works vs. Ellison, 30 Mo. App. 67; Kansas City vs. Hannibal, etc. R. Co., 77 Mo. 180; Eppright vs. Nickerson, 78 Mo. 482; Tenny vs. East Warren Lumber Co., 43 N. H. 343; Hoopes vs. Auburn Water Works Co., 37 Hun. (N. Y.) 572; Muller vs. Boone, 63 Tex. 91; Ballard vs. Carmichael, 83 Tex. 355; McDaniels vs. Flower Brook Mfg. Co., 22 Vt. 274; Smith vs. Smith, 62 Ill. 493; Chicago, etc. R. Co. vs. Lewis, 53 Iowa 101; Morse vs. Beale, 68 Iowa 463; Ingraham vs. Grigg, 13 Smed. & M. (Miss.) 22; Johnson vs. Badger Mill, etc. Co., 13 Nev. 351.

Municipality.

Middleton Sav. Bank vs. Dubuque, 19 Iowa 467.

Acknowledgment by trustees of corporation.

Miners' Ditch Co. vs. Zellerbach, 37 Cal. 543; 99 Am. Dec. 300; Corporate mortgage without seal, North Carolina; Duke vs. Markham, 105 N. Car. 131; 18 Am. St. Rep. 889.

Acknowledgment by president and secretary where there is no special provision.

Jinwright vs. Nelson (Ala.), 17 So. Rep. 91.

Missouri: Sufficient corporation acknowledgment.

Huse vs. Ames, 104 Mo. 91.

Acknowledgment not showing official character of officers.

Klemme vs. McLay, 68 Iowa 158.

Acknowledgment before an officer of the corporation.

Sawyer vs. Cox, 63 Ill. 130; Benson Bank vs. Hove, 45 Minn. 40; Horton vs. Columbian Bldg. Assoc., 6 Cinc. L. Bull. (Ohio) 141.

While it is the proper manner of acknowledgments of corporate instruments that it should be done by the proper corporate official and signed with the corporate signature and acknowledged by the officer, still it has been held that where an officer of the corporation signed the instrument by his official signature and acknowledged the instrument by and in their individual names, still the acknowledgment was held to be sufficient. Thus a corporate deed was signed by "F, the president of the L. Company," and "C, the treasurer of the L. Company," and acknowledged by F. and C. as individuals, and the acknowledgment was held to be sufficient.

Tenny vs. East Warren Lumber Co., 43 N. H. 343; Fitch vs. Lewiston Steam Mill Co., 80 Me. 34; Hoopes vs. Auburn Water Works Co., 37 Hun. (N. Y.) 572.

Acknowledgment by attorney for corporation.

Frostburg Mut. Bldg. Assoc. vs. Brace, 51 Md. 508; Comp. Howe Mach. Co. vs. Avery, 16 Hun. (N. Y.) 555.

Acknowledgment of Articles of Incorporation.

People vs. Montecito Water Co., 97 Cal. 276; Larrabee vs. Baldwin, 35 Cal. 155; Second M. E. Church vs. Humphrey (Supreme Ct.), 21 N. Y. Supp. 89; 66 Hun. (N. Y.) 628; Comp. First Baptist Soc. vs. Rapalee, 16 Wend. (N. Y.) 605; Humphries vs. Mooney, 5 Colo. 283; Sword vs. Wickersham, 29 Kan. 746; Riker vs. Cornwall, 113 N. Y. 115; State vs. Lee, 21 Ohio St. 662; Spinning vs. Home Bldg., etc. Assoc., 26 Ohio St. 483; Coppage vs. Hutton, 124 Ind. 401; Indianapolis Furnace, etc. Co. vs. Herkimer, 46 Ind. 142.

It sometimes happens in taking acknowledgments that the name of the person is left blank. This fact does not render the certificate invalid if it can in any way be supplied from the instrument.

Place for name of grantor left blank. A certificate in these or equivalent words: "Personally came.....to me known to be the identical person whose name is affixed to the foregoing instrument as grantor," etc., etc., the grantor being nowhere in the certificate, is not fatally defective, the name being supplied by reference to the body of the deed.

Magness vs. Arnold, 31 Ark. 103; Sanford vs. Bulkley, 30 Com. 344; Milner vs. Nelson, 86 Iowa 452; Pickett vs. Doe, 5 Smed. & M. (Miss.) 470; 43 Am. Dec. 523; Wilcoxon vs. Osborn, 77 Mo. 621.

And to the same effect are,—

Livingston vs. Kettle, 6 Ill. 116; 41 Am. Dec. 166; Wise vs. Postlewait, 3 W. Va. 452.

But the contrary has been held where the certificate contained no clause identifying the grantor as the person acknowledging the instrument.

Hayden vs. Wescott, 11 Conn. 129; Smith vs. Hunt, 13 Ohio 260; 42 Am. Dec. 201; Lenehan vs. Akana, 6 Hawaiian 538.

And it has been held that a certificate, although it contains the name of the grantor, is fatally defective if it does not appear that such grantor acknowledged the execution of the instrument. Thus an acknowledgment in the following form is invalid: "personally appeared before me A., B., to me known, etc., and acknowledged that executed the said deed."

Buell vs. Irwin, 24 Mich. 145; Huff vs. Webb, 64 Tex. 284.

§ 208. Variance in Name Fatal to Acknowledgment.

The following are cases in which variance in the name has been held fatally defective.

Deed executed by "McKewin," acknowledged by "McKinnie."

Jones vs. Parks, 22 Ala. 446, following Dubose vs. Young, 10 Ala. 365.

Deed signed by "F. W. Chandler," acknowledgment made by "T. W. Chandeler."

Carleton vs. Lombardi, 81 Tex. 355.

Instrument signed by "F. M. McKezie," it having been purported to have been signed by "F. M. McKinzie."

McKinzie vs. Stafford, (Tex. Civ. App., 1894) 27 S. W. Rep. 790.

"James Butler" acknowledging the execution of a deed signed by and purporting to be the act of "Jonas Butler."

Stephens vs. Motl., 81 Tex. 115.

Acknowledgment purporting to have been made byMurray without any other designation of the person; insufficient to convey the title to Jacob Murray.

Hiss. vs. McCabe, 45 Md. 77.

"Geo. H. Crane," known to the notary to be the signer and sealer of deed, in acknowledging the same, is not sufficient proof of execution where the deed is signed "Geo. H. Case."

Heil vs. Redded, 38 Kan. 255.

Deed purporting to be by "Hiram S.," signed by "Harmon S.," inadmissible.

Boothroyd vs. Engles, 23 Mich. 19; Middleton vs. Findla, 25 Cal. 76; Hommel vs. Devinney, 39 Mich. 522.

§ 209. Omissions from Certificate Held Fatal to Acknowledgment.

The following omissions from the certificate have been held fatally defective.

"Known" after "personally."

Tully vs. Davis, 30 Ill. 103; 83 Am. Dec. 179.

"Known" in "personally appeared C. A. D., known to be the individual," etc.

Woolf vs. Epgarty, 6 Cal. 224; 65 Am. Dec. 509; McKie vs. Anderson, 78 Tex. 207.

Omission of "personally known" renders the certificate partially defective.

Gould vs. Woodward, 4 Greene (Iowa) 82.

"Acknowledged" where no equivalent word was used.

Bryan vs. Ramirez, 8 Cal. 461; 68 Am. Dec. 340; Stanton vs. Button, 2 Conn. 527; Pendleton vs. Button, 3 Conn. 406; Cabell vs. Grubbs, 48 Mo. 353; McDaniel vs. Needham, 61 Tex. 269; Virginia Coal, etc. Co. vs. Robertson, 88 Va. 116; Short vs. Conlee, 28 Ill. 219.

"Separately" in "separately and apart."

Dewey vs. Campau, 4 Mich. 565; Comp. Belo vs. Mayes, 79 Mo. 67.

"Private" in "private examination separate and apart from her husband," although the other words were used.

Sibley vs. Johnson, 1 Mich. 380.

"Explained" in "the said instrument having been fully explained to her."

Moores vs. Linney, 2 Tex. Civ. App. 293.

"Signed" in "signed, sealed, and delivered."

Smith vs. Elliott, 39 Tex. 201.

"Sealed and delivered" in "signed, sealed, and delivered."

Toulmin vs. Heidelberg, 32 Miss. 268; Robinson vs. Noel, 49 Miss. 253; Comp. Barton vs. Morris, 15 Ohio 408.

"The within named" and "with whom I am personally acquainted."

Fall vs. Roper, 3 Head (Tenn.) 485.

"Ill-usage" in the certificate of a married woman's acknowledgment, although she acknowledged the instrument "of her own free will, and not through any threats of her said husband or fear of his displeasure."

Hawkins vs. Burress, 1 Har. & J. (Md.) 513.

"Fear" in the certificate of a married woman's acknowledgment where no equivalent words were used. The defect was cured by statute.

Hollingsworth vs. M'Donald, 2 Har. & J. (Md.) 230; 3 Am. Dec. 545.

"He" in "acknowledged that he signed."

Buell vs. Irwin, 24 Mich. 152; Huff vs. Webb, 64 Tex.

284; Stanton vs. Button, 2 Conn. 527; Byran vs. Ramirez, 8 Cal. 401; 68 Am. Dec. 340.

“Purposes” in “consideration and purposes.”

Ford vs. Burks, 37 Ark. 91.

A certificate failing to show that the grantor acknowledged the deed for the consideration and purposes therein expressed is void.

Conner vs. Abbott, 35 Ark. 365; Wright vs. Graham, 42 Ark. 140; Comp. as to law in Texas, Stephens vs. Motl., 81 Tex. 115.

But while such an omission is fatal to the acknowledgment, if the execution of the deed is otherwise proved at the trial, it is admissible in evidence notwithstanding the defective acknowledgment.

Griesler vs McKennon, 44 Ark. 517.

“For the purposes therein set forth.”

Jacoway vs. Gault, 20 Ark. 190; 73 Am. Dec. 494; Little vs. Dodge, 32 Ark. 453; Shryock vs. Cannon, 39 Ark. 434; Currie vs. Kerr, 11 Lea. (Tenn.) 138.

“Without compulsion or constraint from her husband.”

Menees vs. Johnson, 12 Lea. (Tenn.) 561.

“Voluntarily” in certificate of wife’s acknowledgment, although similiar words were used.

Laird vs. Harris, 12 Heisk. (Tenn.) 243.

“Voluntarily” in “his voluntary act and deed,” where the statute requires that word be used.

Wickersham vs. Reeves, 1 Iowa 413; Newman vs. Samuels, 17 Iowa 528; Spitznagle vs. Vanhessch, 13 Neb. 338.

“Having been examined” in a certificate reciting “came the *feme covert* and privately and apart from her husband, and acknowledged.”

Ellett vs. Richardson, 9 Baxt. (Tenn.) 293.

“Without the hearing of” where the certificate recited that the wife was examined “separate and apart from” her husband.

Butterfield vs. Beall, 3 Ind. 203.

A certificate, "and the said . . . wife of the said . . . having been by me examined, . . . and that she do . . . not wish to retract the same. Given under my hand and . . . seal," etc., the names of the grantors appearing in the beginning of the certificate, is fatally defective and can not afterward be amended by the officer.

Comp. Donahue vs. Mills, 41 Ark. 421; Merritt vs. Yates, 71 Ill. 636; 22 Am. Rep. 128.

§ 210. Certificate of Acknowledgment Can Not be Aided by Parol.

It is the settled law applicable to certificates of acknowledgments that a certificate of acknowledgment can not be aided by parol testimony.

Ross vs. M'Lung, 6 Pet. (U. S.) 283; Scott vs. Simons, 70 Ala. 352; Cox vs. Holcomb, 87 Ala. 589; 13 Am. St. Rep. 79; Pendleton vs. Button, 3 Conn. 406; Hayden vs. Wescott, 11 Conn. 129; Russell vs. Rumsey, 35 Ill. 362; Ennor vs. Thompson, 46 Ill. 214; Lindley vs. Smith, 46 Ill. 523; O'Ferrall vs. Simplot, 4 Greene (Iowa) 162; 4 Iowa 381; Barnett vs. Shackleford, 6 J. J. Marsh. (Ky.) 532; 22 Am. Dec. 100; Elwood vs. Klock, 13 Barb. (N. Y.) 50; Silliman vs. Cummins, 13 Ohio 116; Watson vs. Bailey, 1 Binn. (Pa.) 470; 2 Am. Dec. 462; Jourdan vs. Jourdan, 9 S. & R. (Pa.) 268; 11 Am. Dec. 742; Barnett vs. Barnett, 15 S. & R. (Pa.) 72; 16 Am. Dec. 516; Spencer vs. Reese, 165 Pa. St. 158; Harrisonburg First Nat. Bank vs. Paul, 75 Va. 594; 40 Am. Rep. 740; Wise vs. Postlewiatt, 3 W. Va. 452; Leftwich vs. Neal, 7 W. Va. 569; Robinson vs. Noel, 49 Miss. 253.

§ 211. Motion of Members.

A corporation has the power to expel members from its body upon three grounds: First, when a member is guilty of such an infamous crime as would unfit him to associate with honorable and respectable men.

Second, when an offense is committed by a member against his duty as a corporator. In such case, however, he must be tried and convicted by the corporation.

Third, for offenses compounded of the two first mentioned.

Leech vs. Harris, 2 Brewst. 571; People vs. Chicago Board of Trade, 45 Ill. 112; Smith vs. Smith, 3 Desaus, Eq. 557; People vs. N. Y. Com. Ass., 18 Abb. Pr. 271; People vs. Medical Soc., 24 Barb. 570; People vs. Fore Underwriters, 7 Hun. 248; State vs. Chamber of Commerce, 20 Wis. 63.

Before a member of a corporation can be expelled by its members for an infamous crime, the member must have been tried and convicted by a jury of his peers and according to the laws of the land.

Commw. vs. St. Patricks Soc., 2 Binn. 448; Commonw. vs. Guardians of Poor, 6 Serg. & R. 469; and see Soc. for Visitation of Sick vs. Meyer, 52 Pa. St. 125.

An expulsion of the member does not affect his right in the franchise nor can his private property be taken, that is his stock and interest in the corporation, nor does he forfeit his right in the corporation thereby as to his private property, unless such power has been expressly conferred by the charter.

Commonw. vs. St. Patrick's Soc., 2 Binn. 448; Commonw. vs. Guardians of Poor, 6 Serg. & R. 469; see Soc. for Visitation of Sick vs. Meyer, 52 Pa. St. 125; Evans vs. Phila. Club, 50 Pa. St. 107.

And when the right of expulsion exists or there is sufficient grounds therefor, it can not be exercised by the other members of the corporation in an arbitrary or summary manner, but must be done by fair and important trial and the party charged should have every opportunity to be heard.

People vs. St. Franciscus Ben. Soc., 24 How Pr. 216; People vs. Sailor's Snug Harbor, 5 Abb. Pr. N. S. 119; 54 Barb. 532; Southern Plank Road Co. vs. Hixon, 5 Ind. 165; State vs. Adams, 44 Mo. 570; White vs. Brownwell, 2 Daly 329; Sibley vs. Carteret Club, 40 N. J. L. 295.

An incorporated association can not use its power of expulsion for purposes of personal or private revenge, or make it the instrument of religious intolerance or political proscription or disrepute.

State vs. Georgia Med. Soc., 38 Ga. 608; People vs. St. Franciscus Ben. Soc., 24 How. Pr. 216; and see People vs. Farrington, 22 How. Pr. 294; Roehler vs. Mechanic's Aid Soc., 22 Mich. 86.

Strictly speaking, the term "amotion" applies to the officers of a corporation, while the term used to indicate the removal or expulsion of mere members is "disfranchisement."

2 Kent. Comm. 298.

"It is absolutely essential to the validity of the suspension or expulsion of a member of an incorporated society that the accused should be notified of the charges against him, and of the time and place set for their hearing; that the accusing body should proceed upon inquiry and consequently upon evidence; and that the accused should have a fair opportunity of being heard in his defense."

1 Thomp. on Corp., sec. 881.

The corporation, or its authorized board that makes inquiries into the charges against a member, acts in a *quasi* judicial capacity and must confine itself to the powers vested in it. It must pursue remedies prescribed by its laws, and such laws must not be in violation of the laws of the land, nor violate any inalienable right of the member, and if it keeps itself within these bounds, its judgment will be conclusive, otherwise it will be void.

Otto vs. Union, 75 Cal. 308; 17 Pac. 217; Com. vs. Pike Beneficial Soc., 8 Watts & S. (Pa.) 250; Burt vs. Lodge, 66 Mich. 85; 33 N. W. 13; Robinson vs. Lodge, 86 Ill. 598; Pitcher vs. Board of Trade, 121 Ill. 412; 13 N. E. 187.

A court of equity will supervise over such *quasi* judicial inquisition, and they will decide whether there were sufficient grounds for expulsion or whether there has been a lawful exercise of the power vested in such bodies, and they will interfere if there was not sufficient cause to warrant the judgment of the *quasi* judicial body, or if the member has been denied substantial justice or where he has been denied a fair and impartial trial or if the action is malicious.

Otto vs. Union, 75 Cal. 308; 17 Pac. 217; Savannah

Cotton Exchange vs. State, 54 Ga. 668; Com. vs. Pike Beneficial Soc., 8 Watts & S. (Pa.) 250; Burt vs. Lodge, 66 Mich. 85; 33 N. W. 13; Robinson vs. Lodge, 86 Ill. 598; Pitcher vs. Board of Trade, 121 Ill. 412; 13 N. E. 187.

A writ of mandamus is a proper remedy to compel reinstatement of an expelled member.

1 Thomp. Corp., sec 904; State vs. Chamber of Commerce, 20 Wis. 63; State vs. Milwaukee Chamber of Commerce, 47 Wis. 670; 3 N. W. 760; Otto vs. Union, 75 Cal. 308; 17 Pac. 217; Black and White Smith Soc. vs. Vandyke, 2 W. Hort. (Pa.) 309.

§ 212. Capital Stock and Capital.

These words are often used as language interchangeable in their meaning, but such is not true in legal significance. Capital stock is the amount received by the corporation in money, property, or money's worth of something, from the stockholders, and remains the same throughout the life of the corporation, unless changed by legislative enactment.

Christensen vs. Eno, 106 N. Y. 97; 12 N. E. 648; State vs. Morristown Fire Assn., 23 N. J. Law 195; Williams vs. Telegraph Co., 93 N. Y. 152, 188; Barry vs. Exchange Co., 1 Sandf. Ch. (N. Y.) 280.

The capital of a corporation is a broader term and may change as to the substance designated.

It includes everything in the shape of property that the corporation owns or possesses.

If a corporation of \$10,000 capital stock make a profit of \$5,000 more, the corporation will then have a "capital" of \$15,000; whether a corporation make or lose, what it owns or possesses is the "capital."

Christiansen vs. Eno, 106 N. Y. 97; 12 N. E. 648.

"The word capital is unambiguous. It signifies the actual estate, whether in money or property, which is owned by an individual or a corporation. In reference to a corporation, it is the aggregate of the sum subscribing and paid in, or secured to be paid in, by the shareholders, with the addition of all gains or profits realized in the use and investment of those

sums or if losses have been incurred, then it is the residue after deducting such losses."

People vs. Commissioners of Texas, etc., for the City and County of New York, 23 N. Y. 192, 219.

§ 213. Subscriptions.

A subscription to the capital stock of a corporation may be made like any other contract, in as many different ways as the contracting parties may see fit to express their intention to subscribe, and whenever that intent is clearly expressed, it will be held to be sufficient subscription. If the intention to subscribe is clear, it matters very little about the form, as the courts do not sacrifice substance to form, and formal rules are for the most part disregarded.

Ventura, etc. Ry. vs. Collins, 46 Pac. Rep. 297 (see L.); *Blunt vs. Walker*, 11 Wis. 334, 349; *Fry vs. Lexington, etc. R. R.*, 2 Metc. (Ky.) 314; *Wellersburg, etc. Co. vs. Young*, 12 Md. 476; *Gill vs. Kentucky, etc. Co.*, 7 Bush (Ky.) 635; *Oler vs. Baltimore, etc. R. R.*, 41 Md. 583; *Schaeffer vs. Missouri, etc. Co.*, 46 Mo. 248; *Sanger vs. Upton*, 91 U. S. 56; *Upton vs. Tribilcock*, 91 U. S. 45; *Wheeler vs. Millar*, 90 N. Y. 353; *Hamilton, etc. Co. vs. Rice*, 7 Barb. 157; *Dorris vs. French*, 4 Hun. 292; *Boston, etc. R. R. vs. Wellington*, 113 Mass. 79; *Ex. Parte Besley*, 2 Mac. & G. 176; *Clark vs. Farrington*, 11 Wis. 306; *Jewell vs. Rock River Paper Co.*, 101 Ill. 57; *Haynes vs. Brown*, 36 N. H. 545; *Chaffin vs. Cummings*, 37 Me. 76; *Chester Glass Co. vs. Dewey*, 16 Mass. 94; *Griswold vs. Seligman*, 72 Mo. 110; *Boggs vs. Olcott*, 40 Ill. 303; *Musgrave vs. Morrison*, 54 Md. 161; *Phoenix, etc. Co. vs. Badger*, 67 N. Y. 294; *S. C.*, 6 Hun. 293; *Palmer vs. Lawrence*, 3 Sandf. 161; *Philadelphia, etc. R. R. vs. Cowell*, 28 Pa. St. 329; *Cheltenham, etc. Ry. vs. Daniel*, 2 Q. B. 281; *West Cornwall Ry. vs. Mowatt*, 15 Q. B. 521; *Lord St. Leonards in Spackman vs. Evans*, L. R. 3 H. L. Cas. 171, 197; *Herrison vs. Heathorn*, 6 Man. & G. 81; *Ness vs. Angas*, 3 Exch. 805; *Ness vs. Armstrong* 4 Exch. 21; *Moss vs. Steam Gondola Co.*, 17 C. B. 180; *Bailey vs. Universal, etc. Assoc.*, 1 C. B. (N. S.) 557; *Holland vs. Duluth, etc. Co.*, 65 Minn. 324.

The question whether the subscription to the capital stock

of a corporation can be entered into by parol has been decided both in the affirmative and in the negative, the better opinion and the weight of authority holding that a contract of subscription entered into by parol is legal and binding. Where an individual was present at a corporate meeting and directed the secretary to subscribe certain stock and the secretary did so, making out the subscription on a loose sheet of paper, the court held the subscriber bound to his subscription. The court also held the corporate records reciting the facts were competent to show an acceptance on the part of the subscriber, although the records were made out subsequently to the subscription referred to.

Colfax Hotel Co. vs. Lyon, 69 Iowa 683.

A verbal subscription is sufficient. The statute of frauds does not apply.

Bullock vs. Falmouth, etc. Co., 85 Ky. 124; *Taber vs. Anglo-American Assoc.*, 32 S. W. Rep. 602 (Ky.); *Shellenberger vs. Patterson*, 168 Pa. St. 30; *York Park Bldg. Assoc. vs. Barnes*, 39 Neb. 834; *Cookney's Case*, 3 de G. & J. 170.

Even though the charter provides for the opening of corporate books, still a subscription on a memorandum or a sheet of paper is held sufficient.

Buffalo, etc. R. R. vs. Gifford, 87 N. Y. 294; *Brownlee vs. Ohio, etc. R. R.*, 18 Ind. 68; *McClelland vs. Whitely*, 15 Fed. Rep. 322; *State vs. Beck*, 81 Ind. 501; *Iowa, etc. R. R. vs. Perkins*, 28 Iowa 281; *Hamilton, etc. Co. vs. Rice*, 7 Barb. 157; *Cf. Bucher vs. Dillsburg, etc. R. R.* 76 Pa. St. 306; *Hawley vs. Upton*, 102 U. S. 314; *Mexican Gulf Ry. vs. Viavant*, 6 Rob. (La.) 305; *Ashtabula, etc. R. R. vs. Smith*, 15 Ohio St. 328.

Where a statute requires that the signers of the charter or Articles of Incorporation shall insert the number of shares opposite their names subscribed for by them, is a sufficient subscription to bind the subscribers.

Phoenix, etc. Co. vs. Badger, 67 N. Y. 294; *S. C.*, 6 Hun. 293; *Nulton vs. Clayton*, 54 Iowa 425; *Herries vs. Wesley*, 13 Hun. 492.

It has been held, however, that this omission of any one of the subscribers or any one of the signers of the articles will be a good defense to an action against him by the corporation to enforce the subscription.

Coppage vs. Hutton, 124 Ind. 401.

It is not necessary that the subscription be to the Articles of Incorporation.

San Joaquin, etc. Co. vs. Beecher, 101 Cal. 70.

A failure to acknowledge the Articles of Incorporation is a good defense to a subscriber to them who are sued upon their subscription.

Greenbrier Ind. Exposition vs. Rhodes, 37 W. Va. 738.

A subscription contract, like any other contract, may be waived, cancelled or dissolved by the consent of the parties interested. The interested parties are the subscriber himself, the other stockholders, and the corporate creditors existing at the time of cancellation, and in such case the corporate creditors have no power to release a subscriber, unless such authority is delegated to them by the statute or the charter or the by-laws of the incorporation.

Bedford R. R. vs. Bowser, 48 Pa. St. 29; La Fayette, etc. Corp. vs. Ryland, 80 Wis. 29; Rider vs. Morrison, 54 Md. 429; Hughes vs. Antietam Mfg. Co., 34 Md. 316; Ryder vs. Alton, etc. R. R., 13 Ill. 516; Tuckerman vs. Brown, 33 N. Y. 297; Re Esparto Trading Co., L. R. 12 Ch. D. 191; Re United Service Co., L. R. 5 Ch. App. 707; Re London, etc. Coal Co., L. R. 5 Ch. D. 525; Re Argyle, etc. Co., 54 L. T. Rep. 233; Ex parte Fletcher, 37 L. J. (Ch.) 49; Addisons Case, L. R. 5 Ch. 294; Spackman vs. Evans, L. R. 3 Ch. L. 171; Thomas's Case, L. R. 13 Eq. 437.

In such a case, the subscriber can not obtain a cancellation of his subscription except by unanimous consent of the other subscribers.

Kidwelly Canal Co. vs. Raby, 2 Price 93; Lake Ontario, etc. R. R. vs. Mason, 16 N. Y. 451, 463; Hughes vs. Antietam Mfg. Co., 34 Md. 316; Johnson vs. Wabash,

etc. Co., 16 Ind. 389; *United Soc. vs. Eagle Bank*, 7 Conn. 456; *Bishop's Fund vs. Eagle Bank*, 7 Conn. 476.

In such a transaction, the majority rule does not apply, and a majority of the stockholders can not refuse to proceed.

Busey vs. Hooper, 35 Md. 15.

§ 214. Issuing Stock.

There are three methods of issuing stock: First, by subscription payable in money; second, by subscriptions payable in property, labor, or both; third, by a stock dividend. The first method is the easiest method possible. The issue of stock at the present time for property or labor is a valid transaction.

Foreman vs. Bigelow, 4 Cliff. 508, 544; S. C. 9 Fed. Cas. 427, 441; *Searight vs. Payne*, 6 Lea (Tenn.) 283; *Brant vs. Ehlen*, 59 Md. 1; *Spargo's Case*, L. R. 8 Ch. App. 407, 412; *Ashuelot Boot, etc. Co. vs. Hoit*, 56 N. H. 548.

The question whether or not a corporation can make a valid transfer of its stock for any other character of property sometimes involves the question whether or not the transaction is fraudulent; and like any other contract, if it contains the element of fraud, it could not be enforced, or would be invalid.

"That in the absence of fraud an agreement may ordinarily be made by which stockholders can be allowed to pay for their shares in patents, mines, or other property, to which it is not easy to assign a determinate value, appears to be well settled."

New Haven, etc. Co. vs. Linden Spring Co., 142 Mass. 349.

Payment for shares of stock may be in anything the company might lawfully purchase.

"Payment of stock subscriptions need not be in cash, but may be in whatever, considering the situation of the corporation, represents to that corporation a fair, just, lawful, and needed equivalent for the money subscribed. . . ."

"In the construction of railways, a great deal of litigation has arisen as to what a railway company may accept in payment for its stock. A railway company may accept or use its stock for almost anything that is necessary to carry out and complete its railway.

"We can see no objection whatever to a railroad company issuing stock and taking in payment materials or labor or land necessary for its road."

Clark vs. Farrington, 11 Wis. 306.

As to payment in stock for construction work, see also Wood, Railways, 282.

"The corporation had a right to accept payment of stock in labor or materials, in damages which the company were liable to pay, or in any other liability of the company, provided these transactions were entered into and carried out in good faith."

Philadelphia, etc. R. R. vs. Hichman, 28 Pa. St. 318;
Bedford County vs. Nashville, etc. Ry., 14 Lea (Tenn.) 525.

Holding, also, that thirty years' delay in demanding the stock is no bar to the right. To the same effect, payment being in services.

Kobogum vs. Jackson Iron Co., 76 Mich. 498

Payment may be in cross-ties.

Ohio, etc. R. R. vs. Cramer, 23 Ind. 490.

Or in real estate and services.

Cincinnati, etc. R. R. vs. Clarkson, 7 Ind. 595

Or in services or materials.

Phillips vs. Covington Bridge Co., 2 Metc. (Ky.) 219.

One railroad having power to consolidate with another may, in payment therefor, issue stock to the contractors who are constructing the latter.

Branch vs. Jessup, 106 U. S. 468.

A corporation may agree to give \$5,000 of stock to one who will borrow \$15,000 for it.

Araphoe, etc. Co. vs. Stevens, 13 Colo. 534.

A contract that subscriptions shall be payable in land is illegal by statute in Alabama, but after subscription, payment in land may be allowed.

Knox vs. Childersburg Land Co., 86 Ala. 180; Washburn vs. National, etc. Co., 81 Fed. Rep. 17.

Promissory notes may be taken in payment for stock.

Stoddard vs. Shetucket Foundry Co., 34 Conn. 542 (1868); *Ogdensburg, etc. R. R. vs. Wooley*, 3 Abb. Ct. of App. Dec. 398; *Magee vs. Badger*, 30 Barb. 246; *Goodrich vs. Reynolds*, 31 Ill. 490; *Vermont Central R. R. vs. Claves*, 21 Vt. 30; *Hardy vs. Merriweather*, 14 Ind. 203; *Pacific Trust Co. vs. Dorsey*, 72 Cal. 55.

Where stock is issued in payment for property, labor or contract work, there need be no formality of a previous subscription. The fact that the charter authorizes the opening of the books for subscription, does not confine the disposition of the stock to that method. Any other mode by which they see fit to allow parties to become stockholders would be right and proper.

"If a railroad company could sell its stock for the right of way, for lands for depot purposes, for iron, or anything essential to the accomplishment of its purpose, it might do so."

Western Bank of Scotland vs. Tallam, 17 Wis. 530; *Clark vs. Farrington*, 11 Wis. 306; *Reed vs. Hayt*, 51 N. Y. Super. Ct. 121, *aff'd*, 109 N. Y. 659.

In *Jackson vs. Traer*, 64 Iowa 469, the court said:—

"We have seen no case which recognizes a difference between those stockholders who become such in pursuance of a written agreement and those who become such by the mere acceptance of stock issued to them."

A subscription to stock, however, is payable in cash, unless there is a contract to the contrary.

Farwell vs. Great West. Tel. Co., 161 Ill. 522; *Dalton, etc. vs. Dalton*, 66 L. T. Rep. 704.

The third method of issuing stock is by a stock dividend. This is allowable when an amount of cash or property equal to the amount of the par value of the stock so divided is added permanently to the capital stock of the corporation. A stock dividend can not be made unless the whole of the capital stock has not been issued or when it has been increased. Stock dividends are prohibited by legislative enactments in some States, and unless so prohibited, they are sustained by the courts.

Williams vs. Western Union Tel. Co., 93 N. Y. 162, 188 et seq.; Dock vs. Schlichter, etc. Co., 167 Pa. St. 370; Farwell vs. Great Western Tel. Co., 161 Ill. 522, a dictum; City of Ohio vs. Cleveland, etc. R. R., 6 Ohio St. 489; Howell vs. Chicago, etc. R. R., 51 Barb. 378; Clarkson vs. Clarkson, 18 Barb. 646; Simpson vs. Moore, 30 Barb. 637; Gordon vs. Richmond, etc. R. R., 78 Va. 501, 521; Minot vs. Paine, 99 Mass. 101; Boston, etc. R. R. vs. Commonwealth, 100 Mass. 399; Deland vs. Williams, 101 Mass. 71; Rand vs. Hubbell, 115 Mass. 461, 474; Gibbons vs. Mahon, 4 Mackey. 130; Jones vs. Morrison, 31 Minn. 140; Earp's Appeal, 28 Pa. St. 368; Wiltbank's Appeal, 64 Pa. St. 256; Commonwealth vs. Pittsburgh, etc. R. R., 74 Pa. St. 83; Brown vs. Lehigh Coal, etc. Co., 49 Pa. St. 270; Commonwealth vs. Cleveland, etc. R. R., 29 Pa. St. 370; Parker vs. Mason, 8 R. I. 427; State vs. Baltimore, etc. R. R., 6 Gill. (Md.) 363.

§ 215. Watered Stock.

The issuing of shares of stock as fully "paid up," when the same is not fully paid is a species of issuing stock called watered stock. A share of stock is supposed in theory to be a representation of its face value in some kind of property that has been paid in to the corporation. The company is supposed to part with its stock and receive in lieu thereof something equal to the value stated on the face of the stock, or its par value. In *Handley vs. Stutz*, 139 U. S. 417, 428, the court said:—

"The stock of a corporation is supposed to stand in the place of actual property of substantial value, and as being a convenient method of representing the interest of each stockholder in such property, and to the extent to which it fails to represent such value it is either a deception and fraud upon the public, or an evidence that the original value of the corporate property has become depreciated. . . . If it be once admitted that a corporation may issue stock without receiving a consideration therefor, and where it does not represent actual or substantial value in corporate assets, there is apparently no limit to the extent to which the original stock may be 'watered,' except the caprice of the stockholders."

It is said in *Jeans, Railw. Prob.* 311:—

"In 1872 the difference between the total cost of American railways and their equipment, and the total capital of the system was \$85,250,000. In 1884 this sum had been increased to upward of \$162,000,000. In 1872 the watered capital amounted to an average of about \$800 per mile, but in 1884 the average of such capital was only \$343 per mile. At the end of 1884 fully ten per cent of the total capital embarked in American lines was additional to the actual cost of the railways and their equipment, and the greater part of it may be regarded as representing 'watered stock.'

"The facilities which exist for the properly issued stock are equally open to the sale of fictitiously paid-up stock until it has become understood that railroad and business corporations will make these issues of stock.

"The issue is generally to the organizers or other operators, in ostensible payment for property or construction work. It is no unusual thing for a newly organized railroad corporation to issue to a construction company bonds and stock whose par value is many times the value of the construction work. These bonds and stock are then sold to the public at a profit, large or small, according to the prospects of the enterprise and the skill of the manipulators. Soon, however, default is made in the payment of the interest of the bonds, and this is followed by corporate insolvency, foreclosure, receivership, and reorganization. The issue of fictitiously paid-up stock is the device of corporate promoters, organizers, and manipulators in carrying out their plans of realizing enormous gains from small investments, and in accumulating great fortunes at the expenses of the public. Occasionally, too, the issue is made for the purpose of concealing large and unreasonable profits, which, if known, might cause the public to regulate and diminish the source of income, and in such case, a stock dividend is resorted to."

In Atkinson, *Distribution of Products* (2d ed., 1886), p. 259, it is said:—

"The elimination of what has been called 'watered stock and bonds,' against which the silly crusade of the so-called anti-monopolists has been directed, is therefore in process of accomplishment by methods far more potent than any possible legislative acts, namely, by the triple competition of waterways. Second, the competition of one railway with another. Third, the competition of product with product in the greater markets of the world."

Mr Simon Sterne, in the *Cyclopedia of Political Science, Political Economy, and United States History*, vol. 3, 527, gives an illustration of how watered stocks and bonds are issued, as follows:—

“A line from one point to another, say a distance of one hundred miles, is surveyed. It is ascertained that it will cost about \$15,000 a mile to build, including acquisition of land, and about \$5,000 a mile to equip, a total of \$20,000 a mile. Application is then made for town and county aid, which aid is generally represented by investment in the stock of the road. The first purpose is to give as little as possible in the way of value in return for such money aid, and it is therefore necessary to interpose between the stock and the property a sufficient number of mortgages to make prospective value of the stock of little or no value. A construction company is then organized, which takes the town and county aid as part of its capital; and the railway corporation, instead of making its contract on the basis of cash, issues to the construction company say first mortgage bonds of \$20,000 a mile, or possibly \$25,000 a mile; second mortgage bonds of \$20,000 a mile, and stock of an equal value, making a total capitalization of \$65,000 a mile, instead of \$20,000, at which the road could be constructed. The construction company is composed generally, directly or indirectly, of the officers of the road and their friends, who built the road upon the basis of cash obtained by negotiating through bankers the securities represented by the bond issues of the railroad company; they acquire the stock for little or nothing, and also frequently a large proportion, if not the whole, of the second mortgage; and in prosperous times they may succeed in building and equipping the road on the issue of the bonds secured by the first mortgage alone. By this system the road comes into existence laboring under the necessity to earn, over and above operating expenses, interest on a funded debt about double the cost of the enterprise, and, if possible, to earn dividends on the stock beyond that sum.”

§ 216. Three Methods of Issuing Watered Stock.

There are three methods of issuing watered stock. First, where the stock is issued for an amount of money less than the par value of the stock, and the certificate purporting on its face that the full value has been paid. Second, for property or labor at an over-valuation.

Third, by a stock dividend, the equivalent par value of which has not been permanently added to the capital stock.

Nothing can be said in mitigation of the practice of issuing watered stock except that possibly it would be impossible in many instances to divine the simulated or partly simulated from the real enterprise, owing to the very fact of the impossibility of precisely, in the first place, deciding the value of a given property, for that it might be high or worth more to one than to another. For illustration, take a mining property, a mere prospect, it may not be worth one dollar; it may be worth a hundred millions. In such case, how is the capital stock going to be fixed?

If incorporated, it must be put at something, and where? Who knows? Who is going to decide? The elements of uncertainty in the value renders it impossible to fix the exact capitalization of the company at its precise worth; hence, the judgment of those who do fix the value on the property and who also fix the capital stock of the company, at the same are not and ought not to be chargeable with simulation of any kind.

All business is attended with the element of uncertainty in some form, and this must be true, owing to the perishableness of personal property following the natural law of the eternal passing of all things. It may also be said that when human ingenuity is without ability to duplicate a real transaction with a pretended one, the stock of mankind can then be said to be well "watered." Watered stock is not *per se* illegal, unless declared so by express enactment.

Struges vs. Stetson, 1 Biss. 246; S. C. 23 Fed. Cas. 311; Fosidck vs. Sturges, 1 Biss. 255; S. C. 9 Fed. Cas. 501; Gilman, etc. R. R. vs. Kelly, 77 Ill. 426; Campbell vs. Morgan, 4 Bradw. (Ill.) 100; Nicrosi vs. Irvine, 102 Ala. 648.

In *Scolville*, 105 U. S. 143, 153, the court said, about non-full paid stock:—

"It is conceded to have been the contract between him and the company that he should never be called upon to pay any

further assessments upon it (the stock). The same contract was made with all the other shareholders, and the fact was known to all. As between them and the company, this was a perfectly valid agreement. It was not forbidden by the charter or by any law or public policy."

In re Ambrose, etc. L. R. Ch. D. 390, 394, 395, the court said:—

"It seems to me impossible to say that, however wrong the transaction was in respect to other persons, there was anything wrong as between the company and the vendors."

The increase of stock for no consideration whatever has been sustained.

Knapp vs. Publishers, 127 Mo. 53.

Many states have made efforts by various provisions of their constitutions and by legislative enactment in some way to prevent the issuing of watered stock, and practically it has failed. Mr. Cook, in his work on corporations, says:—

"Moreover, the bewildering currents of conflicting decisions, even in those States where the most earnest efforts are made to enforce the constitutional provisions, leave the investor on an unknown sea, without chart, compass, landmark, or pilot."

It is believed to be a proper deduction from the review of authorities with respect to watered stock, that any enterprise may be launched upon the judgment of those who promote it, and their judgment as to the value of the property will be absolute, and the investor's remedy is his ability to discover, which he always may, whether the stock is a good investment or not. This he may usually do by an examination of the company's holdings. Any reasonable, prudent business man can discover whether the stocks are beyond where he wishes to invest or not. If the investor discovers the stock does not represent more than a certain per cent of the face value of the stock, still he can buy it at that per cent—10 per cent, 25 per cent, 50 per cent, or whatever the value of the property is in his opinion and be safe in his investment. Property is now so largely represented by stock that the investor is forced to investigate before he invests.

§ 216a Fraud in Issue of Stock—Creditors.

Creditors may get their own if they can show fraud. The Supreme Court of Minnesota explains why a creditor has a better right.

"The capital of a corporation is the basis of its credit. It is a substitute for the individual liability of those who own its stock. People deal with it and give it credit on the faith of it. They have a right to assume that it has paid-in capital to the amount which it represents itself as having; and if they give it credit on the faith of that representation and if the representation is false, it is a fraud upon them; and in case the corporation becomes insolvent, the law, upon the plainest principles of common justice, says to the delinquent stockholder, 'Make that representation good by paying for your stock.' It certainly can not require the invention of any new doctrine in order to enforce so familiar a rule of equity. It is the misrepresentation of fact in stating the amount of capital to be greater than it really is that is the true basis of the liability of the stockholders of such cases; and it follows that it is only those creditors who have relied, or who can fairly be presumed to have relied upon the professed amount of capital, in whose favor the law will recognize and enforce an equity against the holders of 'bonus stock.'"

Hasper vs. Northwestern Manufacturing Co., 48 Minn. 174; 50 Nev. 1117.

The true rule is stated by the same court in Hastings Malting Co. vs. Iron Range Brewing Co., 65 Minn. 28; 67 N. W. 652, as follows:—

"Upon principle and authority a corporation may in good faith issue paid-up shares of its stock for the purchase of property at a fair valuation, and in such case the corporation and its creditors are bound by it."

"In the practical application of the rule, it must be kept in mind that fraud, actual or constructive, is the basis of the stockholders' liability to the creditor.

"On the one hand the value of the property is to be determined, not from subsequent events, but as of the time of the transaction, and from the nature, situation, and condition of the property as they honestly appeared to the parties at the time. Although there was in fact an overvaluation of the property, it will not render the stockholders liable for the

deficiency if it was the result of an honest mistake or error of judgment."

Much depends upon the character of enterprise in which a corporation engages. In the early case of *In re South Mountain Mining Co.* 8 Sawyer U. S. 366 the court said:—

"The mode of forming mining corporations is well known to anybody. A prospector finds, as he supposes, a valuable mine. It requires capital to work it, which he does not possess. He goes to the money and business centers, where he finds capitalists accustomed to organize corporations for the development of new mines, and makes such arrangements as he can. He presents such evidence of the value of his mine as he has obtained. Little is known of the real value. It may be worth nothing, and it may be worth millions. Parties are found willing to take hold of the enterprise. They agree to incorporate and fix the capital stock at some purely nominal amount, and divide it into a certain number of shares, corresponding to the amount of capital adopted. The owner of the mine, for an agreed number of shares and in consideration of the promises of the other parties to assist in the development of the mine, conveys the mine and receives for it the amount of stock agreed upon. The other parties, for their services in organizing and managing the company and its business, receive a large portion of the stock, there being usually a considerable amount of stock reserved by the company, which is put upon the market and sold for such price as can be obtained, to raise a fund to secure machinery and develop the mine. The price of this stock is of course determined by the prospect of the mine, its location, and its probable richness, and confidence of the public reposed in the experience, ability, and character of those having the management. Mining corporations are *sui generis*. They are organized and carried on upon principles wholly different from banking, railroad, insurance, and ordinary commercial corporations having a subscribed capital stock."

For a very instructive case see *Iron Co. et al vs. Hays et al* 165, Pa. st. 489, where the court in reversing the case said:—

"We should agree with the court below that the property was sold at more than its actual value, if that value was to be determined by subsequent results rather than by prospects as they appeared at the time of sale. But if the parties were

mistaken in relation to its value, we do not see how, in the absence of any averment of fraud in the transaction, the sale can be disregarded and the subscriptions to the capital stock treated as unpaid. The proofs show that they were paid exactly in accordance with the agreement under which they were made, and until that agreement is attacked as fraudulent, the creditors stand in no better position than the corporation itself. The decree is reversed so far as it requires payment of the stock subscriptions or any part thereof."

Kelly vs. Clark, 53 Pac. (Mont.) 959; Montana Ry. Co. vs. Warren, 12 Pac. (Mont.) 641.

If there is a statute on the subject of the valuation of property for which stock is issued it must be observed.

Donald vs. American Refining Co., 61 N. J. Eq. 456; Bank vs. Lumber Co., 9 S. E. (W. Va.) 357; Watterbee vs. Baker, 35 N. J. Eq. 501; Clark vs. Bever, 139 U. S. 96; Fogg vs. Blair, 139 U. S. 118; Lubke vs. Knapp, 79 Mo. 22.

§ 216b. Promoter.

"A promoter," says the Supreme Court of California is,—
"one who initiates a corporate enterprise. He brings the incorporation and the capital necessary to prosecute the contemplated business together and is active in setting the corporate machinery in motion."

Ex-mission L. & W. Co. vs. Flash, 97 Cal. 610; Burbank vs. Dennis, 101 Cal. 90.

§ 216c. Promotion or Bonus Stock.

Upon the subject of promotion or bonus stock Legislatures have enacted and the court ruled. Where there are statutes, necessarily they govern in their jurisdiction, otherwise much has been ruled and the rules differ.

If a corporation not in a failing condition gives some of its stock away may it not do so just the same as an individual gives his property, so long as there is enough to pay creditors what right have they to complain? It may be the best business policy the company could inaugurate to interest strength in that very way.

On the other hand to be just before generous is principle, and why should it not apply with equal force to corporate

concerns? This, however, anticipates that creditors will be injured, and if injured ought they not have their remedy? But against who?

If there are creditors and the stock is given away, is that not dividing the assets and decreasing the creditors' security? If it is, he can complain. If a creditor has a first right to the assets over the stockholders as his security, then he can not be injured whatever may be done with the stock and has no right to be heard.

To illustrate, the Court of Appeals of New York has said:—

“It may be admitted that the liability of subscribers on unpaid stock subscriptions constitute an asset of the corporation which can not be given up by the corporation without consideration on the part of the creditors. The unissued shares of a corporation are not assets. When issued they represent the proportionate interest of the shareholders in the corporate property,—an interest, however, subordinate to the claims of creditors. There are unquestionably public evils growing out of the creation and multiplication of shares of stock in corporations not based upon corporate property. The remedy is with the Legislature. But the liability of a shareholder to pay for the stock does not arise out of his relation, but depends upon his contract, express or implied, or upon some statute, and in the absence of either of these grounds of liability, we do not perceive how a person to whom shares have been issued as a gratuity has by accepting them committed any wrong upon the creditors or made himself liable to pay the nominal face of the share as upon his subscription or contract.”

Christensen vs. Eno, 106 N. Y. 97; 12 N. E. 648; N. H. H. N. Co. vs. Co., 142 Mass. 349.

On the other hand courts have, so to speak, created a liability in favor of creditors upon bonus or promotion stock when issued as non-assessable stock to stockholders, they have treated such issue of stock as an unpaid subscription for stock.

Schoville vs. Thayer, 105 U. S. 143; Handley vs. Stutz, 139 U. S. 417; De La Vergne Refrigerator Co. vs. German; Saving, etc., 175 U. S. 40; Rogers vs. Gross, 67

Minn. 224; Garret vs. Co., 113 Mo. 330; Peninsula Savings B. vs Co., 105 Mich. 538.

§ 217. Assignment of Stock—How Made.

1. May be made by simple delivery.

Decaremont vs. Bogert, 36 Hun. 382; Frazier vs. Charleston, 11 S. C. 486.

If the corporation transfers a certificate without the old certificate being signed, the company is liable to the owner of the old certificate.

Taft vs. Presidio, etc. Co., 84 Cal. 131.

2. By an assignment of the certificate on the back or separate paper.

Smith vs. Savin, 140 N. Y. 315.

3. By a blank power of attorney on the back of the certificate authorizing some person, left in blank, to sign the transfer-book of the company.

Allen vs. South Boston R. R. Co., Mass. 200; S. C. 25 Fed. Cas. 745; Taft vs. Presidio, 84 Cal. 131; 22 Pac. Rep. 485; Quay vs. Presidio, etc. R. R., 82 Cal. 1.

4. The transfer of stock does not require a seal, such transfer is like the transfer of any other chose in action. The seal is entirely superfluous.

German Union, etc. Assoc. vs. Sendmeyer, 50 Pa. St. 67; Commercial Bank vs. Kortright, 22 Wend. 348; McNeil vs. Tenth Nat. Bank, 46 N. Y. 325; Bridgeport Bank vs. New York, etc. R. R., 30 Conn. 231, 274; Easton vs. London, J. S. Bank L. R. 34 Ch. D. 95.

Commercial necessity has established the rule, which the courts have recognized "that a transfer in blank is sufficient to pass the stock" this is by the seller simply to sign his name to the power of attorney on the back of the stock with nothing more.

Walker vs. Detroit Transit Ry., 47 Mich. 338; Pennsylvania R. R.'s Appeal, 86 Pa. St. 80; Cutting vs. Damerel, 88 N. Y. 410; German Union, etc. Assoc. vs. Sendmeyer, 50 Pa. St. 67; Ex parte Sargent, L. R. 17 Eq. 273; Ortigosa vs. Brown, 47 L. J. (Ch.) 168; Re Barned's Banking Co., L. R. 3 Ch. App. 105.

A power of attorney on the back of a certificate of stock signed in blank is sufficient to transfer shares of stock in a corporation.

Andrews vs. Worcester, etc. R. R., 159 Mass. 64 (1893).

Even in the absence of such issuance, a blank transfer on the back of a certificate, to which the holder has affixed his name, is a good assignment; and a party to whom it is delivered is authorized to fill it up by writing a transfer and power of attorney over the signature.

McNeil vs. Tenth Nat. Bank, 46 N. Y. 325, 331.

§ 218. Power in Blank Filled in by Holder Legal.

"There is no force in the suggestion that the power of attorney in the present case was incomplete, because there were blanks for the number of shares, and for the name of the attorney. Any holder might fill up the blanks and constitute himself the attorney. These points are too well settled to need discussion."

Holbrook vs. New Jersey Zinc Co., 57 N. Y. 616, 623.

§ 219. Dividends.

A dividend ordinarily means profit of the corporation.

Lockhardt vs. Van Alstyne, 31 Mich. 76; *Chaffee vs. Rutland R. R.* 55 Vt. 110, 129; *Hyatt vs. Allen*, 56 N. Y. 553.

"The term dividend in its technical as well as in its ordinary acceptation means that portion of its profits which the corporation, by its director, set apart for ratable division among its shareholders."

Mobile, etc. R. R. vs. Tennessee, 153 U. S. 486.

Until a dividend is declared by the proper corporate authorities, the profits belong to the company and not to the stockholder.

See authorities *supra*.

There are four ways in which a dividend may be paid: In cash; in stock; in bonds or scrip; in property. The dividends of a corporation are declared by the directors and not by the stockholders. As was said in *Hunter vs. Roberts*, 83 Mich. 63—

"The directors of a corporation, and they alone, have the power to declare a dividend of the earnings of the corporation and to determine its amount."

A scrip dividend is a dividend of certificates giving the holder certain rights which are specified in the certificate itself. These dividends are usually declared when the company has property that it wishes to divide which is not in the shape of money. The company wishing to anticipate the time when the property may be sold for cash, and the cash distributed by a money dividend, and the certificates usually or sometimes draw interest until the company shall have accumulated sufficient surplus to pay the certificates in full.

Chaffee vs. Rutland R. R., 55 Vt. 110; State vs. Baltimore, etc. Co., 6 Gill. (Md.) 363; Rogers vs. New York, etc., Land Co., 134 N. Y. 197.

In Brown vs. Lehigh, etc. Co., 49 Pa. St. 270, a share of scrip was as follows:—

§ 220. Scrip, Form of.

No. Shares

This is to certify that, heirs or assigns, will be entitled, upon the surrender of this certificate to shares in the capital stock of the Lehigh Coal and Navigation Company as soon as the present funded debt of the company has been paid off, or adequate provision made for its discharge when due and payment demanded and will also be entitled to a *pro rata* share of any future distribution of scrip; but not to any cash dividend until this certificate has been converted into stock, as above provided.

Or, this certificate may, at any time, at the option of the holder thereof, be converted into stock upon payment by said holder, either in cash or in the six-per-cent loans of the company, of the par value of said stock, and the surrender of this certificate.

This certificate is transferable only at the office of the company.

Witness, etc.

Scrip is practically the same thing as shares of stock, except that it has no voting power. It is usually issued because the company can issue no more capital stock, the capital stock

having already been out. If the interest or dividends are payable only from the profits, the issue of the scrip is legal whenever a stock dividend would be legal; that is, whenever the property of the company is equal in value to the capital stock plus the scrip dividend. For an instructive case on scrip dividends, see *Bailey vs. Railroad Co.*, 22 Wall. 604.

A property dividend is where property is divided instead of that property being sold for cash and the cash then used to pay a dividend.

Merchant vs. Western Land Assoc., 56 Minn. 327; *Olsen vs. Homestead, etc. Co.*, 87 Tex. 368.

A property dividend accrues where a corporation sells all its property to another corporation and takes in payment thereof stock, and the bonds of the purchasing corporation, and then makes a distribution of the same among its stockholders. However, any stockholder desiring his part of the bonds or desiring his part of the sale in cash, is entitled to the same and may have an injunction until it is secured.

State vs. Bailey, 16 Ind. 46; *Kelly vs. Mariposa Land, etc. Co.*, 4 Hun. 632; Cf. *New Jersey Zinc Co. vs. New Jersey Franklinite Co.*, 13 N. J. Eq. 322; S. C., 15 N. J. Eq. 418.

The majority of stockholders have no right upon a dissolution to sell the property to a new corporation for stock in the latter, and then say to the minority:—

“We have formed a new company to conduct the business of this old corporation, and we have fixed the value of the shares of the old corporation. We propose to take the whole of it and pay you for your shares at that valuation, unless you come into the new corporation, taking shares in it in payment of your shares in the old one.”

Mason vs. Pewabic Min. Co., 133 U. S. 50; *Mason vs. Pewabic Min. Co.*, 66 Fed. Rep. 391; Cf. *Treadwell vs. Salisbury Mfg. Co.*, 73 Mass. 393; *Buford vs. Keokuk, etc. Co.*, 3 Mo. App. 159; *Black vs. Delaware, etc. Canal Co.*, 22 N. J. Eq. 130, 415; S. C., 24 N. J. Eq. 455; *Lauman vs. Lebanon Valley R. R.*, 30 Pa. St. 42.

A stock dividend, as the name implies, is a dividend of the stock of the company. Such a dividend is lawful when an amount of money or property equivalent in value to the full par value of the stock distributed as a dividend has been accumulated and is permanently added to the capital stock of the corporation.

Williams vs. Western Union Tel. Co., 93 N. Y. 162, 188, et seq.; Dock vs. Schlichter, etc. Co., 167 Pa. St. 370; Farwell vs. Great Western Tel. Co., 161 Ill. 522, a dictum; City of Ohio vs. Cleveland, etc. R. R., 6 Ohio St. 489; Howell vs. Chicago, etc. R. R., 51 Barb 378; Clarkson vs. Clarkson, 18 Barb. 646; Simpson vs. Moore, 30 Barb. 637; Gordon vs. Richmond, etc. R. R., 78 Va. 501, 521; Minot vs. Paine, 99 Mass. 101; Boston, etc. R. R. vs. Commonwealth, 100 Mass. 399; Deland vs. Williams, 101 Mass. 571; Rand vs. Hubbell, 115 Mass. 461, 474; Gibbons vs. Mahon, 4 Mackey, 130; Jones vs. Morrison, 31 Minn. 140; Earp's Appeal, 28 Pa. St. 368; Wiltbanks Appeal, 64 Pa. St. 256; Commonwealth vs. Pittsburgh, etc. R. R., 74 Pa. St. 83; Brown vs. Lehigh Coal, etc. Co., 49 Pa. St. 270; Commonwealth vs. Cleveland, etc. R. R., 29 Pa. St. 370; Parker vs. Mason, 8 R. I. 427; State vs. Baltimore, etc. R. R., 6 Gill (Md.) 363; Harris vs. San Francisco Sugar, etc. Co., 41 Cal. 393.

The question often arises as to who shall receive the dividend. The general rule is that the person in whose name the stock stands registered upon the corporate stock book at the time the dividend is declared is entitled to the dividend.

Brisbane vs. Delaware, etc. R. R., 94 N. Y. 204; affirming 25 Hun. 438; Donnally vs. Hearndon, 41 W. Va. 519; Jones vs. Terre Haute, etc. R. R. 29 Barb. 353, affirmed, 57 N. Y. 196; Northup vs. Newton, etc. Turnp., 3 Conn. 544; Cf. Manning vs. Quicksilver Min. Co., 24 Hun. 360.

It is a well-settled rule that a corporation will be protected in paying dividends to a recorded shareholder, although he may have transferred his shares, no notice of the transfer having been given to the company.

Bank of Commerce's Appeal, 73 Pa. St. 59; Bell vs. Lafferty, 1 Pa. Sup. Ct. 454; Bank of Utica vs. Smalley.

2 Cow. 770; *Smith vs. American Coal Co.*, 7 Lans. 317; *Cleveland, etc. R. R. vs. Robbins*, 35 Ohio St. 483.

However, if the company have notice of the transfer of the stock, they must pay the dividend to the transferee.

Robinson vs. New Berne Nat. Bank, 95 N. Y. 637; *Timberlake vs. Shippers' Compress Co.*, 72 Miss. 323; See authorities *supra.*, beginning at "*Bank of Commerce's Appeal.*"

As between a vendor and vendee of the stock, the rule is settled that the vendee is entitled to all the dividends on the stock which are declared after the sale, even though the transfer has not been recorded.

Jermain vs. Lake Shore, etc. R. R., 91 N. Y. 483; *March vs. Railroad Co.*, 43 N. H. 515, 520; *Ryan vs. Leavenworth, etc. R. R.*, 21 Kan. 365, 403; *Foot vs. Worthington* 39 Mass. 299; *Jones vs. Terre Haute, etc. R. R.*, 57 N. Y. 196; *Currie vs. White*, 45 N. Y. 822; *Brundage vs. Brundage*, 65 Barb. 397, 408, affirmed, 60 N. Y. 544; *Goodwin vs. Hardy*, 57 Me. 143; *Hill vs. Newichawanick Co.*, 8 Hun. 459; *aff'd*, 71 N. Y. 593 (1877); *Bates vs. McKinley*, 31 L. J. (Ch., 398; *King vs. Follet*, 3 Vt. 385; *Cf. Kane vs. Bloodgood*, 7 Johns, Ch. 90.

The transfer also passes such dividends as are declared subsequently to the transfer, although the dividend may have been earned previous to the time the transfer was made.

Kane vs. Bloodgood, 7 Johns, Ch. 90, by Chancellor Kent; *Goodwin vs. Hardy*, 57 Me. 143; *March vs. Eastern R. R.*, 43 N. H. 515; *Phelps vs. Farmers', etc. Bank*, 26 Conn. 269; *Brundage vs. Brundage*, 1 Thomp & C. 82; *aff'd*, 60 N. Y. 544; *Jones vs. Terre Haute, etc. R. R.*, 57 N. Y. 196; *Currie vs. White*, 45 N. Y. 822.

And a purchaser of stock at a tax sale, if the proceedings are legal and regular, is entitled to a certificate and to dividends subsequently declared.

Smith vs. Northampton Bank, 58 Mass. 1.

A pledgee of stock is entitled to dividends on the stock, but must account for the dividends when the pledge is redeemed.

Herrman vs. Maxwell, 47 N. Y. Super. Ct. 347.

And the pledgor who collects them holds them in trust for the pledgee.

Hill vs. Newichawanick Co., 8 Hun. 459; affirmed, 71 N. Y. 599.

In *Central, etc. Bank vs. Wilder*, 32 Neb. 454, it was held that not only was the pledgee entitled to the dividends, but was entitled to them although the stock stood on the corporate books in the name of the pledgor, where the officers knew all about the pledge. Where a pledge of stock is renewed and a new note given, dividends accruing before the renewal go to the pledgor.

Fairbanks vs. Merchants' Nat. Bank, 132 Ill. 120.

A pledgee is entitled to collect the dividends, and in some instances may do so even though the stock is not transferred to him on the books, it being shown that the officers knew of the pledge.

Guarantee Co. vs. East Rome Town Co., 96 Ga. 511.

A pledgee of stock, even though not recorded as a stockholder, is entitled to dividends declared after the pledge was made, as against a claim of the corporation against the pledgor as an offset.

Gemmell vs. Davis, 75 Md. 546.

Where a stockholder of record pledges his certificates of stock, and no transfer is made on the books, and subsequently a dividend is declared, and after such dividend is payable, but before it is actually paid, the pledgee presents to the company the stock for transfer, with a written request of the pledgor to the same effect, together with an assignment by the pledgor to the pledgee of the dividend, it is no defense to the company that it has a claim against the pledgor for a personal debt, or for a debt of a firm in which he is interested.

American, etc. Bank vs. Nashville, etc. Co., 36 S. W. Rep. 190 (Tenn.)

The corporation is liable to a pledgee, to whom the stock has been transferred on the books, for dividends paid to the

pledgor. The acceptance of part payment, etc., by the pledgee from the pledgor does not waive his cause of action against the company.

Boyd vs. Conshocken Worsted Mills, 149 Pa. St. 363.

In Maine it has been held that while a corporation may pay an ordinary dividend to a stockholder of record, yet that a dividend paid in the liquidation and winding up of the corporation must be paid to the holder of the certificate, even though such holder be a transferee who has not been recorded as such on the books of the company, and that the company is liable to him for dividends in liquidation, even though it has paid them to the registered stockholder, and that this rule applies to a pledgee of a certificate of stock as well as a purchaser of a certificate of stock.

Bath Sav. Inst. vs. Sagadahoc Nat. Bank, 89 Me. 500.

Where a certificate is issued by the corporation to the pledgee as pledgee, on the face of the certificate, the dividends must be paid to him; and if the corporation pays the dividends to the pledgor, it is liable therefor to the pledgee.

Hunt vs. Laconia, etc. Ry., 39 Atl. Rep. 437 (N. H.)

In insolvency proceedings a pledgee is entitled to dividends without giving up his security, and the federal court will not follow the State decisions on this point in receivership cases.

London, etc. Bank vs. Willimette, etc. Co., 80 Fed. Rep. 226.

The pledgee is entitled to the dividends, even though the stock stands in the name of the pledgor on the books of the company.

George, etc. Co. vs. Rangel, etc. Co., 50 Pac. Rep. 630 (Utah.)

A bill in equity may be maintained by a stockholder to prevent an unequal or unfair distribution of the profits of the company.

Luling vs. Atlantic Mut. Ins. Co., 45 Barb. 510.

The minority may bring the officers to an accounting for an unfair distribution of the bonds, etc., owned by a construction company.

Meyers vs. Scott, 2 N. Y. Supp. 753.

A dividend when declared becomes a debt in favor of the shareholder, and is a separate and distinct fund from the capital stock and surplus profits.

Van Dyck vs. McQuade, 86 N. Y. 38; Jermain vs. Lake Shore, etc. R. R., 91 N. Y. 483; Keppel vs. Petersburg R. R., Chases Dec. 167; King vs. Paterson, etc. R. R. Co., 29 N. J. L. 82, 504; Hill vs. Newichawanick Co., 71 N. Y. 593; affirming S. C., 8 Hun. 459; Brundage vs. Brundage, 60 N. Y. 544; affirming S. C., 65 Barb. 397; Spear vs. Hart, 3 Rob. (N. Y.) 420; Manning vs. Quicksilver Min. Co., 24 Hun. 360; Kane vs. Bloodgood, 7 Johns. Ch. 90; Beers vs. Bridgeport Spring Co., 42 Conn. 17; Fawcett vs. Laurie, 1 Dr. & Sm. 192; Re Le Blanc, 14 Hun. 8.

A dividend once declared can not be revoked.

Beers vs. Bridgeport Spring Co., 42 Conn. 17.

However, a dividend is within the power of the directors to declare, and not the shareholders, and it is for them to say whether or not a dividend shall be declared.

"The directors of a corporation, and they alone, have the power to declare a dividend of the earnings of the corporation and to determine its amount."

Hunter vs. Roberts, 83 Mich. 63.

The board of directors and not the stockholders declare dividends.

Grant vs. Ross, 37 W. Rep. 263 (Ky.).

Many attempts have been made to induce the court of equity to compel the directors to declare dividends, but still, though they have not disclaimed jurisdiction, they have uniformly refused to interfere.

New York, etc. R. R. vs. Nickalls, 119 U. S. 296; rev'g, 15 Fed. Rep. 575; Ely vs. Sprague, Clarke, Ch. 351; Williams vs. Western Union Tel. Co., 93 N. Y. 162; Reynolds vs. Bank of Mount Vernon, 6 N. Y. App. Div.

62; *Park vs. Grant Locomotive Works*, 40 N. J. Eq. 114; *Barnard vs. Vermont, etc. R. R.*, 89 Mass. 512; *Chaffee vs. Rutland R. R.*, 55 Vt. 110, 133; *Smith vs. Plattville Mfg. Co.*, 29 Ala. 503; *Barry vs. Merchants' Exchange Co.*, 1 Sandf. Ch. 280.

In *Rex vs. Bank of England*, 2 B. & Ald. 620, the court refused to grant a mandamus for an examination of the accounts with a view to compelling a dividend.

The directors are bound to distribute as profits only such part of the net income as they think proper; and their judgment of what is proper is conclusive upon the stockholders.

State vs. Baltimore, etc. R. R., 6 Gill (Md.) 363; *Cf. Dent vs. London Tramways Co.*, L. R. 16 Ch. D. 344.

In *Park vs. Grant Locomotive Works*, 40 N. J. Eq. 114, the court said:—

“In cases where the power of the directors of a corporation is without limitation and free from restraint, they are at liberty to exercise a very liberal discretion as to what disposition shall be made of the gains of the business of the corporation. Their power over them is absolute so long as they act in the exercise of an honest judgment. They may reserve of them whatever their judgment approves as necessary or judicious for repair and improvements, and to meet contingencies, both present and prospective.”

In the above case, however, a contract that all the net profits should be divided annually varied these rules. The court refused to order a dividend.

In *State vs. Bank of Louisiana*, 6 Ala. 66, the court refused to order a bank to declare a dividend, although it had profits on hand of about one tenth of its capital. The court said:—

“If the board honestly err in these matters, we are not ready to say the courts possess the power to rectify its mistakes.”

The remedy is in the elections. Courts will not order a dividend to be declared unless the directors,—

“refuse to declare a dividend when the corporation has a surplus of net profits which it can, without detriment to its business, divide among its stockholders, and when a refusal

to do so would amount to such an abuse of discretion as would constitute a fraud or breach of that good faith which they are bound to exercise toward the stockholders."

A dividend will not be ordered when the profits are invested in the plant and in long-time notes.

Hunter vs. Roberts, 83 Mich. 63.

In Smith vs. Prattville, etc. Co., 29 Ala. 503, the court refused to order a dividend, inasmuch as the charter expressly vested discretion as to that matter in the board of directors.

Where large dividends are made by a manufacturing company, it is entirely within the fair and honest discretion of the directors whether the remaining profits shall be passed to surplus or used for dividends.

McNab vs. McNab, etc. Co., 62 Hun. 18.

The fact that a manufacturing company extended its business so as to include iron pipe as well as brass, and loaned money, which loans, however, the president was willing to take up, and had owned government bonds, is not sufficient to entitle a stockholder who has acquiesced therein to demand that all profits be paid out in dividends.

McNab vs. McNab, etc. Co., 62 Hun. 18.

Although the road was leased and the floating debt was only \$1,000, and the bonded debt, \$70,000, was due in seventeen years, and the other expenses only \$6,000, while the company had \$36,000 on hand and the regular rental for its road coming in, yet the court refused to order a dividend. In Karnes vs. Rochester, etc. R. R., 4 Abb. Pr. (N. S.) 107, the court holding also that a demand must first be made, and that the directors, instead of the company, are the proper parties defendant. Barbard vs. Vermont, etc. R. R., 89 Mass. 512, there was a contract to pay dividend, and it was upon this contract that the court based its right to pass upon the ability of the company to declare a dividend. The court refused to order a dividend.

In Richardson vs. Vermont, etc. R. R., 44 Vt. 613, the court decreed the payment of what was substantially a dividend to

the stockholder, but stated that an accounting must first be had to ascertain whether there was available for that purpose,—

“a fund adequate, not only for the payment of the claims of the plaintiffs in the cause, but for the payment of all stockholders having like claims; and there must be a surplus fund over and above what is requisite for the payment of the current expenses of the business, for discharging its duties to creditors, and over and above what reasonable prudence would require to be kept in the treasury to meet the accidents, risks, and contingencies incident to the business of operating the railroad.”

In *Dent vs. London Tramways Co.*, L. R. 16 Ch. D. 344, the court compelled the company to pay a dividend on the preferred stock, where there were profits available, but the common stockholders proposed to use all the profits for long-neglected repairs, the real reason being that there were profits sufficient for a dividend on the preferred, but not on both the common and preferred. The court said that profits meant the “surplus in receipts, after paying expenses and restoring the capital to the position it was in on the first of January in that year.”

Where a bill in equity, filed for the purpose of obtaining an accounting and the declaration of a dividend, does not clearly make out the existence of a surplus which the directors ought to distribute, the suit will fail.

A discovery will not be granted where there is no allegation that information is refused, or that the party can not examine the books, or that a mandamus was inadequate.

Wolfe vs. Underwood, 96 Ala. 329.

§ 221. Notice of Corporate Meetings.

ESSENTIAL ELEMENTS.

Calling a corporate meeting is important in point of law, when the notice thereof is called in question by legal proceedings. To be valid and binding on those to whom the notice is given, three things must happen and concur: time, place, and purpose of the call meeting.

Parties receiving notices with either one of the above requisites omitted are not bound, unless the law, charter, or by-laws otherwise provide, or make notice unnecessary.

Should one or any number of these requisites be provided for in the by-laws or elsewhere, then the other requisites must be stated, else the party receiving the notice will not be bound.

Nevertheless, meetings may be held at a subsequent time to that fixed in the charter.

People vs. Cummings, 72 N. Y. 433; *Hughes vs. Parker*, 20 N. H. 58.

Elections need not be held on the day fixed by the by-laws. They may be held at any subsequent time.

Beardsley vs. Johnson, 121 N. Y. 224; S. C., 1 N. Y. Supp. 608.

A stockholder who takes part in a meeting is bound and will not be heard to say that others had no notice thereof.

Nickum vs. Burckhardt, 47 Pac. Rep. 788 (Oreg.).

Generally where the charter or by-laws fix the time and place of the regular meetings, the notice need not designate the particular business to be transacted thereat.

Notice need not be given of special business to be transacted at the regular annual meeting of the stockholders.

Chicago, etc. Ry. vs. Union Pac. Ry., 47 Fed. Rep. 15.

Sampson vs. Bowdoinham Steam-mill Co., 36 Me. 78, holding that the notice of the annual meeting need not specify that the officers are to be elected, even though the by-laws require the notice to state the business. *Warner vs. Mower*, 11 Vt. 385, where a provision of the by-laws relating to notices was considered as not affecting those for stated meetings, and holding that a notice of a stated annual meeting need not specify the business to be transacted, there being nothing in the by-laws limiting or specifying the business. It is believed, however, that the rights of stockholders will be best preserved by requiring notice to be given of any extraordinary business that may come before an annual meeting.

Warner vs. Mower, 11 Vt. 385, 393; State vs. Bonnell, 35 Ohio St. 10, 15.

If the charter or by-laws of a corporation fix the time and place at which regular meetings shall be held, this is itself sufficient notice to stockholders, and no further notice is necessary.

Morrill vs. Little Falls Mfg. Co., 53 Minn. 371.

As to whether notice is necessary of the annual meeting, where the corporation has long been defunct, see Morrill vs. Little Falls Mfg. Co., 60 Minn. 405.

The precise hour at which the meeting is to be held must be stated in the notice.

San Buenaventura, etc. Co. vs. Vasault, 50 Cal. 534.

All special meetings, that is all such meetings as are not provided for in the charter or by-laws, the notice must state particularly the time, place, and the business to be transacted at such meetings.

Re Bridgeport Old Brewery Co., L. R. 2 Ch. 191; Re Silkstone Fall Colliery Co., L. R. 1 Ch. D. 38; Cf. Wright's Case, L. R. 12 Eq. 335 n., 345 n.

Tuttle vs. Michigan Air Line, 35 Mich. 247, holding that at common law all notices of meetings for special or exceptional purposes were required to state the object of the call.

Ang. & A Corp. 492.

A meeting to organize and elect directors is invalid where no notice of the business is given.

Re London, etc. Co., L. R. 31 Ch. D. 223.

Shelby R. R., etc. vs. Louisville, etc. R. R., 12 Bush (Ky.) 62, in which a sale of a railroad was set aside because authorized at a meeting of stockholders called by a notice not sufficient in point of time and defective in not stating the object of the meeting.

Zabriskie vs. Cleveland, etc. R. R., 23 How. 381, 400, holding that, though the notice was insufficient, yet one who was represented by proxy can not object where he delayed a long time in complaining.

A notice of a meeting of a benevolent society called to dissolve must state the object of the meeting.

St. Mary's, etc. Assoc. vs. Lynch, 64 N. H. 213.

A resolution passed at an extraordinary meeting upon a matter for the consideration of which it was not avowedly called, or which was not specified in the notice convening the meeting, is altogether inoperative.

Imp. Bank of China vs. Bank of Hindustan, L. R. 6 Eq. L. R. 91; Anglo-Californian Gold Min. Co. vs. Lewis, 6 H. & N. 174; Stearic Acid Co., 9 Jur. (N. S.) 1066.

Notice of a meeting to consider the giving of a mortgage is sufficient to enable the meeting to authorize a mortgage.

Evans vs. Boston Heating Co., 157 Mass. 37.

One and the same meeting may be both ordinary and extraordinary; ordinary for the purpose of transacting the usual business of the company, and extraordinary for the transaction of some particular business of which special notice may have been given.

See Cutbill vs. Kingdom, 1 Exch. 494; Graham vs. Van Diemen's Land Co., 1 H. & N. 541.

It is a better rule to follow, even at regular meetings, to specify the business to be transacted thereat.

The annual meeting can not vote an increase of the capital stock, unless special notice of that business has been given though the by-laws provide that any business may be transacted at the annual meeting without special notice; the statute, however, prescribing that an increase of capital stock may be at "any meeting called for the purpose."

Jones vs. Concord, etc. R. R., 38 Atl. Rep. 120 (N. H.).

By custom any business may be transacted at the annual meeting without special notice thereof being given, but any specific restriction as to any particular business modifies such rule.

Mutual F. Ins. Co. vs. Farquhar, 39 Atl. Rep. 527 (Md.).

Where a special meeting is called for a particular purpose, no other business can be transacted at that meeting.
Warner vs. Mower, 11 Vt. 385.

Where all the stockholders meet and transact business, no notice is necessary either at a general or special meeting.
Rex vs. Theodorick, 8 East 543.

§ 222. Service of Notice of Meeting.

Where the charter, by-laws, or statute provide the manner of service of notice, that method must be followed, else the meeting is invalid.

In *Shelby R. R. vs. Louisville, etc. R. R.*, 12 Bush (Ky.) 62, there was no such publication as was required by statute, and there was no waiver of notice.

In *Tuttle vs. Michigan Air Line*, 35 Mich. 247, where a consolidated company sued a subscriber to stock in one of the old companies, and he defeated the action by showing that the statutory notice of the proposed consolidation had not been given.

In *Reilly vs. Oglebay*, 25 W. Va. 36, where a notice is given by the secretary, when the statute required it to be given by the board of directors or by stockholders holding one tenth of the capital, was held insufficient, although it was shown that he had authority from stockholders holding the required amount of stock.

Stevens vs. Eden Meeting-house Soc., 12 Vt. 688, holding that where a by-law required notice to be posted, parol proof of such posting was incompetent unless the written notice was shown to have been lost.

Swansea Dock Co. vs. Levian, 20 L. J. (Exch.) 447, where a notice was held bad because the statute declared it should be printed in a newspaper circulating in the district of the principal place of business, while in this case there was no proof that the paper selected ever circulated there. Hence the removal of directors at such a meeting was illegal.

Swansea Dock Co. vs. Levian, 20 L. J. (Exch.) 447.

If all the stockholders waive notice, the meetings will be valid, all their proceedings will be binding.

Authorities *supra*.

In all such cases each member must have a notice, which he receives, nor will physical incapacity excuse giving a member notice.

Notice to non-residents by letter was upheld in *Stebbins vs. Merritt* 64, Mass. 27. For dicta to the effect that the notice must be in person; see *Tuttle vs. Michigan Air Line*, 35 Mich. 247.

Stow vs. Wyse, 7 Conn. 214; *Stebbins vs. Merritt*, 64 Mass. 27.

§ 223. Time of Service of Notice.

Stockholders must be served with notice a reasonable time before the meeting. If there is a customary time for the meeting, then that time should be stated in the notice.

Re *Long Island R. R.*, 19 Wend. 37.

Cf. *Covert vs. Rogers*, 38 Mich. 363, where a similar rule is declared as to notice to directors of their meetings. The Legislature can not unreasonably shorten the time of the next meeting.

Cassell vs. Lexington, etc. Co., 9 S. W. Rep. 502 and 701 (Ky.)

A reorganization under the English statute will not be sustained as against American stockholders, where the entire business of the English company is to own and work American mines and the by-laws of the company provide for a longer notice than is specified in the English statute. The notice of the meeting to reorganize not having reached the American stockholders in time to attend the meeting, the American courts will not sustain the reorganization.

Brown vs. Republican, etc. Mines, 55 Fed. Rep. 7;
Shelby R. R. vs. Louisville, etc. R. R., 12 Bush (Ky.) 62.

§ 224. Waiver of Notice.

Notice is a personal right that can be waived at any time

by any stockholder; where doubt arises, it is a safe plan to have all the stockholders sign a waiver of notice. And even if all are not present, they may subsequently ratify the acts of those present at the meeting.

The acts of a meeting are valid though held without notice, if all are present or subsequently ratify and approve of the action.

Stutz vs. Handley, 41 Fed. Rep. 531; affirmed as to this point, but reversed as to others in Handley vs. Stutz, 139 U. S. 417.

A party accepting the benefit of a contract for a long time can not repudiate it on the ground that the calls for the meetings of the executive committee and of the stockholders which authorized the contract were insufficient, nor can he set up in such a case that the directors had not authorized the contract.

Union Pac. Ry. vs. Chicago, etc. Ry., 51 Fed. Rep. 309.

A stockholder who takes part in a meeting can not afterward object that it was not properly called.

Weinburgh vs. Union, etc. Co., 37 Atl. Rep. 1026 (N. J.).

Objections to the regularity of the notice which was given are waived if all are present at the meeting and do not object to such irregularity.

Stebbins vs. Merritt, 64 Mass. 27.

Richardson vs. Vermont, etc., 44 Vt. 613, holding that objections to the proceedings of a meeting called by a notice which did not state what its object was had been waived by a ratification at a later meeting.

Jones vs. Milton, etc. Turnp., 7 Ind. 547, where the stockholders not notified appeared and voted by proxy.

Kenton Furnace Co. vs. McAlpin, 5 Fed. Rep. 737.

Where several persons, their associates, and successors, are declared to be a corporation, one of them with new parties may meet, organize, adopt by-laws, etc., without the capital being first subscribed and without the others, if they do not object.

McGinty vs. Athol, etc. Co., 155 Mass. 183.

Notice may be waived.

People vs. Twaddell, 18 Hun. 427.

Questions like increasing the capital stock are vital, and even though a member may be present, yet he may object because notice was not given to others, and the result thereby have been changed.

Jones vs. Concord, etc. R. R., 38 Atl. Rep. 120 (N. H.).

It is a presumption of law that notice has been regularly given. The burden of proof is upon him who contends to the contrary to show the meeting was irregular.

McDaniels vs. Flower Brook Mfg. Co., 22 Vt. 274; Porter vs. Robinson, 30 Hun. 209; Sargent vs. Webster, 54 Mass. 497; South School, etc. vs. Blakeslie, 13 Conn. 227, 235; Lane vs. Brainerd, 30 Conn. 565; Pitts vs. Temple, 2 Mass. 538.

Wells vs. Rodgers, 60 Mich. 525, holding that notice is presumed, and the burden of proof in attacking the legality of the meeting is on the plaintiff.

All the stockholders are presumed to have had notice of a meeting that has been held.

Beardsley vs. Johnson, 121 N. Y. 224; Cf. Wiggin vs. Freewill, etc. Church, 49 Mass. 301, 312.

§ 225. Adjourned Meeting.

An adjourned meeting is not a new meeting, requiring notice, unless deferred long after, but only a continuation of the old meeting. Any business may be done at an adjourned meeting that might have been done at their regular original meeting.

Approved in State vs. Cronan, 49 Pac. Rep. 41 (Nev.); Granger vs. Grubb, 7 Phila. 350; Farrar vs. Perley, 7 Me. 404; Scadding vs. Lorant, 3 H. L. Cas. 418.

Cf. People vs. Batchellor, 22 N. Y. 128, where the New York City board of aldermen appointed a day for the election of a city officer. At a subsequent stated meeting this resolution was rescinded, and then an election was thereupon held. Held that the election was void, as some members were ab-

sent from the former meeting and had no notice of the election. A board of aldermen can not elect an assessor, and then at an adjourned meeting reconsider and elect some one else.

State vs. Phillips, 79 Me. 506.

See also *Hardenburgh vs. Farmers', etc. Bank*, 3 N. J. Eq. 68, where the stockholders at the first meeting proceeded to an election in spite of an adjournment by the commissioners, and the election was upheld. A meeting adjourned for want of a quorum may at the adjourned meeting proceed to business, if a quorum is present, and no notice of the adjourned meeting is necessary where the charter or by-laws provide for such adjournment.

Smith vs. Law, 21 N. Y. 296, involving a meeting of the board of directors.

§ 226. Power of Corporators to Wind Up Its Affairs.

A private corporation may sell all the corporate property and wind up its entire business, even though the minority dissent, when, in the exercise of a sound discretion of the majority, it is considered wise to do it.

Treadwell vs. Manufacturing Co., 7 Gray (Mass.) 393; *Taylor vs. Earle*, 8 Hun. (N. Y.) 1; *Brown vs. Winisimmet Co.*, 11 Allen (Mass.) 326; *Hendee vs. Pinkerton*, 14 Allen (Mass.) 381; 1 *Cumming Cas. Priv. Corp.* 336; *State vs. Western Irr. Canal Co.*, 40 Kan. 96; 19 *Pac.* 349; *Leggett vs. Banking Co.*, 1 N. J. Eq. 541; *Dupee vs. Water-Power Co.*, 114 Mass. 37; *Aurora A. & H. Soc. vs. Paddock*, 80 Ill. 263; *Benbow vs. Cook*, 115 N. C. 324; 20 *S. E.* 453; *Reynolds' Widow vs. Commissioners*, 5 Ohio 204; *Miners' Ditch Co. vs. Zellerbach*, 37 Cal. 543; *Simpson vs. Hotel Co.*, 8 H. L. Cas. 712.

"All civil corporations, . . . unless expressly restrained by the act which establishes them, or by some subsequent act, have, and always have had, an unlimited control over their respective properties, and may alienate in fee, or make what estates they please, for years, for life, or entail, as fully as any individual may do with respect to his own property."

1 *Kyd. Corp.* 108.

The majority represent the corporation and they can not go beyond the limit conferred by the charter. The majority can not dissolve the corporation before the expiration of the time expressed in the charter. The dissolution must be reached by the consent of all the stockholders unless otherwise expressed in the charter.

Barton vs. Association, 114 Ind. 226, 16 N. E. 486.

Neither can the majority impose an obligation on a stockholder other than his contract.

McLaughlin vs. Railroad Co., 8 Mich. 100.

Neither can the majority discriminate against the other stockholders and in favor of themselves, nor commit any fraud against the minority. If so, a court of equity will set it aside upon an action by the minority.

Miner vs. Ice Co., 93 Mich. 97; 53 N. W. 218.

"It is no longer doubted, either in England or the United States, that courts of equity, in both, have a jurisdiction over corporations, at the instance of one or more of their members, to apply preventive remedies by injunction, to restrain those who administer them from doing acts which would amount to a violation of charters, or to prevent any misapplication of their capital or profits which might result in lessening the dividends of stockholders, or the value of their shares, as either may be protected by the franchise of a corporation, if the acts intended to be done create what is in the law denominated a breach of trust. And the jurisdiction extends to inquire into, and to enjoin, as the case may require that to be done, any proceedings by individuals, in whatever character they may profess to act, if the subject of complaint is an imputed violation of a corporate franchise or the denial of a right growing out of it, for which there is not an adequate remedy at law."

Doud vs. Railway Co., 65 Wis. 108; 25 N. W. 533.

No question is better settled than that if the majority stockholders do or threaten to do *ultra vires* acts in violation of the rights of other stockholders, and the proper officers refuse to take action to stop it or reverse it, or if the directors or other agents of the corporation do or threaten to do acts

in violation of their trust and the majority acquiesce or refuse to take action to stop it, or if injury is done to the corporation by extrinsic parties and the majority of the stockholders or proper officers refuse to act, then a minority of stockholders or one stockholder can maintain an action to redress the wrong or injury thus perpetrated.

Atwood vs. Merryweather, L. R. 5 Eq. 464, note; 1 Cumming Cas. Priv. Corp. 717; Simpson vs. Hotel Co., 8 H. L. Cas. 712; Menier vs. Telegraph Works, 9 Ch. App. 350; 1 Cumming Cas. Priv. Corp. 722; Booth vs. Robinson, 55 Md. 419; Mason vs. Harris, 11 Ch. Div. 97; 1 Cumming Cas. Priv. Corp. 731; Russell vs. Waterworks Co., L. R. 20 Eq. 474; 1 Cumming Cas. Priv. Corp. 725; Dodge vs. Woolsey, 18 How. 331; 1 Cumming Cas. Priv. Corp. 739; Chicago City Ry. Co. vs. Allerton, 18 Wall. 233; 1 Cumming Cas. Priv. Corp. 752; Zabriskie vs. Railroad Co., 23 How. 381; City of Davenport vs. Dows, 18 Wall. 626; 1 Cumming Cas. Priv. Corp. 754; Hawes vs. City of Oakland, 104 U. S. 450; 1 Cumming Cas. Priv. Corp. 756; Nathan vs. Tompkins, 82 Ala. 437; 2 South. 747; Peobody vs. Flint, 6 Allen (Mass.) 52; 1 Cumming Cas. Priv. Corp. 795; Brewer vs. Boston Theater, 104 Mass. 378; Miner vs. Ice Co., 93 Mich. 97; 53 N. W. 218; 2 Cumming Cas. Priv. Corp. 234; Shep. Cas. Corp. 181; City of Chicago vs. Cameron, 120 Ill. 447; 11 N. E. 899; Bailey vs. Gaslight Co., 27 N. J. Eq. 196; 2 Cumming Cas. Priv. Corp. 207; Wayne Pike Co. vs. Hammons, 129 Ind. 368; 27 N. E. 487; Allen vs. Curtis, 26 Conn. 456; Slattery vs. Transportation Co., 91 Mo. 217; 4 S. W. 79; Greaves vs. Gouge, 69 N. Y. 154; Brinckerhoff vs. Bostwick, 88 N. Y. 52; Black vs. Huggins, 2 Tenn. Ch. 780; Cogswell vs. Bull, 39 Cal. 320; Hazard vs. Durant, 11 R. I. 195.

In Meeker vs. Iron Co., 17 Fed. 48, it is said:—

“The holders of a majority of the stock of a corporation may legally control the company’s business, prescribe its general policy, make themselves its agents, and take reasonable compensation for their services. But, in thus assuming the control, they also take upon themselves the correlative duty of diligence and good faith. They can not lawfully manipulate the company’s business in their own interests, to the injury of other stockholders.”

It must not be understood that the minority have the legal right to complain of every action of the majority,—no such broad right exists, but some kind of fraud or oppression must appear, otherwise the will of the majority must govern. As was said in *Gamble vs. Water Co.*, 123 N. Y. 91; 25 N. E. 201:—

“The court would not be justified in interfering, even in doubtful cases, where the action of the majority might be susceptible of different constructions. To warrant the interposition of the court in favor of the minority shareholders in a corporation or joint-stock association, as against the contemplated action of the majority, where such action is within the corporate powers, a case must be made out which plainly shows that such action is so far opposed to the true interests of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that he must have acted with an intent to subserve some outside purpose, regardless of the consequences to the company, and in a manner inconsistent with its interests. Otherwise the court might be called upon to balance probabilities of profitable results to arise from the carrying out of the one or the other of different plans proposed by or on behalf of different shareholders in a corporation, and to decree the adoption of that line of policy which seemed to it to promise the best results, or at least to enjoin the carrying out of the opposite policy. This is no business for any court to follow.”

The majority of those who appear at a lawful meeting can transact all business, nor is it necessary that the number present be a majority of the whole of numbers of members.

Ex parte Willcox, 7 Cowen 402, 410, note; *Madison Ave. Baptist vs. Baptist Church in Oliver St.*, 5 Robt. 649; *Treadwell vs. Salisbury Manf. Co.*, 7 Gray 393; *Faulds vs. Yates*, 57 Ill. 416; *S. C.* 11 Am. Rep. 24; *Gregory vs. Pritchett*, 33 Beav. 595; *Brewer vs. Boston Theater*, 104 Mass. 378.

Majority at common law means the major part of those members present at a corporate meeting. However, there is one exception; i. e., there must be more than one; two or more is sufficient.

“There is a distinction taken between a corporate act to be

done by a select and definite body, as a board of directors, and one to be performed by the constituent members. In the latter case, a majority of those who appear may act, but in former a majority of the definite body must be present, and then a majority of the quorum may decide. This is the general rule on the subject, and, if any corporation has a different modification of the expression of the binding will of the corporation, it arises from the special provisions of the act or charter of incorporation."

2 Kent, Comm. 293; 1 Kyd, Corp. 401; Ex parte Willcocks, 7 Cow. (N. Y.) 402, 410; Field vs Field, 9 Wend. (N. Y.) 394, 403.

The majority can not amend the fundamental essentials of the charter.

Illinois River R. Co. vs. Zimmer, 20 Ill. 654; Banet vs. Railroad Co., 13 Ill. 504; Hartford & N. H. R. Co. vs. Crosswell, 5 Hill (N. Y.) 383; 1 Cumming Cas. Priv. Corp. 894; Pacific R. R. vs. Renshaw, 18 Mo. 210; Pacific R. R. vs. Hughes, 22 Mo. 291.

To illustrate: In Banet vs. Alton & S. R. Co., it was said:—

"An alteration in a charter may be so extensive as to work a dissolution of the contract of subscription. An amendment which essentially changes the nature or objects of a corporation will not be binding on the stockholders. A corporation formed for the purpose of constructing a railroad can not be converted into a company to construct an improvement of a different character, without the consent of all the corporators. A road intended to secure the advantages of a particular line of travel and transportation can not be so changed as to defeat that general object. The corporation must remain substantially the same, and be designed to accomplish the same general purpose and subserve the same general interests. But such amendment of the charter as may be considered useful to the public and beneficial to the corporation, and which will not divert its property to new and different purposes, may be made, without absolving the subscribers from their engagements. The straightening of the line of the road, the location of a bridge at a different place on a stream, or deviations in the route from an intermediate point, will not have the effect to destroy or impair the contract between the corporation and the subscribers. We regard these conclusions as reason-

able and just, and as well calculated to facilitate the construction of improvements and promote the best interests of the public and of stockholders. The incidental benefits which a few subscribers may realize from a particular location ought not to interfere with the general interests of the public and of the great mass of the corporators. These interests of the public and of the corporation may with propriety be consulted and encouraged, especially where the alteration will not operate to depreciate the value of the stock. A shareholder has no cause to complain of the loss of a mere incidental benefit, which formed no part of the consideration of his contract of subscription."

The question arises whether the State in conjunction with a majority can change the charter under the legal reservation of the power to amend, alter or repeal the charter by the State, some courts holding that the charter can be thus changed. In New York it was held:—

"When it is expressly provided between the Legislature, on the one hand, and the corporation on the other, as part of the original contract of incorporation, that the former may change or modify or abrogate it, or any portion of it, it can not be said that any contract is broken or infringed when the power thus reserved is exercised with the consent of the artificial body of whose original creation and existence such reservation formed an essential part. The stockholder can not say that he became a member of the corporation on the faith of an agreement made by the Legislature with the corporation that the original act of incorporation should undergo no change except with his assent. Such a position might be asserted with more plausibility if there was an absence of a clause in the original act of incorporation providing for an alteration in its terms.

"In such a case, it might, perhaps, be maintained that there was a strong implication that the charter should remain inviolate, and that the holders of shares invested their property in the corporation relying upon a contract entered into between it and the Legislature that the provisions of the act creating it should remain unchanged. But it is difficult to see how such a construction can be put on a contract which contains an express stipulation that it shall be subject to amendment and alteration. If it be asked by whom such amendment or alteration is to be made, the answer is obvious:

By the parties to the contract,—the Legislature on the one hand, and the corporation on the other; the former expressing its intentions by means of a legislative act, and the latter assenting thereto by a vote of the majority of the stockholders, according to the provisions of its charter. Is it nothing more than the ordinary case of a stipulation that one of the parties to a contract may vary its terms with the assent of the other contracting party."

White vs. Railroad Co., 14 Barb. (N. Y.) 560; Schenectady & S. Plank-Road Co. Thatcher, 11 N. Y. 102. Buffalo & N. Y. C. R. Co. vs. Dudley, 14 N. Y. 336.

Courts of equal respectability have held the opposite view, which has the great weight of authority.

Zabraskie vs. Hackensack & N. Y. R. Co., 18 N. J. Eq. 178; 1 Cumming Cas. Priv. Corp. 781.

The latter view takes root in the Dartmouth College Case vs. Woodward, 4 Wheat. (U. S.) 518, followed by a long line of decisions, as follows:—

1 Cumming Cas. Priv. Corp. 490; W. D. Smith Cas. Corp. 148; Shep. Cas. Cor. 248; Hazen vs. Bank, 1 Sneed (Tenn.) 115; Zimmer vs. State, 30 Ark. 677; Downing vs. Board, 129 Ind. 443; 28 N. E. 123, 614; Ruggles vs. People, 91 Ill. 256; Illinois Cent. R. Co. vs. People, 95 Ill. 313; State vs. Greer, 78 Mo. 188; Hamilton vs. Keith, 5 Bush (Ky.) 458; Cary Library vs. Bliss, 151 Mass. 364; 25 N. E. 92.

§ 227. Notice to Officers as Notice to the Company.

It is a general rule that an officer or agent of the corporation who has knowledge of the facts of a transaction which was acquired while he was acting for the company within the scope of his authority and duties, is notice to the corporation. This is a rule of agency. The rule itself excludes the notion of knowledge by an agent while acting in his private capacity, for that a board of directors can not receive notice that will be binding on the corporation except when they are acting as a board. The company can not be affected by notice in their individual capacity.

Bank of U. S. Davis, 2 Hill (N. Y.) 451; Buttrick vs. Railroad, 62 N. H. 413; New Haven, M. & W. R.

Co., vs. Town of Chatham, 42 Conn. 465; Farrell Foundry vs. Dart, 26 Conn. 376; Farmers' & Citizens' Bank vs. Payne, 25 Conn. 444; Saint vs. Manufacturing Co., 95 Ala. 362, 10 South. 539; Atlantic Cotton Mills vs. Indian Orchard Mills, 147 Mass. 268 17 N. E. 496; Huron Printing & Binding Co. vs. Kittleson, 4 S. D. 520; 57 N. W. 233.

"Notice to one agent of a corporation with respect to a matter covered by his agency must be as efficacious as to its directors or to its president, since these also are only agents, with larger powers and duties, it is true, but not more fully charged with respect to the particular thing than he whose authority is confined to that one thing."

Saint vs. Manufacturing Co., 95 Ala. 362, 10 South. 539, 544; Merchants' Nat. Bank vs. Lovitt, 114 Mo. 519, 21 S. W. 825; Johnston vs. Shortridge, 93 Mo. 277, 6 S. W. 64; Frenkel vs. Hudson, 82 Ala. 158, 2 South. 758; Wickersham vs. Zinc Co., 18 Kan. 481; Inverarity vs. Bank, 139 Mass. 332; 1 N. E. 282; Casco Nat. Bank vs. Clark, 139 N. Y. 307; 34 N. E. 908.

§ 228. Stockholders' Dealings with the Corporation.

Stockholders of a corporation are separate and distinct from the corporation, as has heretofore been pointed out, and have the same rights to contract with the corporation as a stranger has. The only limitation upon their acts is that they commit no fraud and they have as much right and may enforce their contracts in like manner in which a stranger can.

Lexington Life, Fire & Marine Ins. Co. vs. Page, 17 B. Mon. 412.

And a stockholder who is a creditor may take a mortgage to secure the debt.

Gorden vs. Preston, 1 Watts (Pa.) 385.

They may be a preferred creditor.

Lexington Life, Fire & Marine Ins. Co. vs. Page, *supra*.

§ 229. Fiduciary Relation of Officers.

The courts have used various terms to express the relation of the officers of a corporation with the corporation, such as trustees, agents, mandataries, etc., but they all agree that

whatever may be the name used to express it, that relation is a fiduciary relation.

1 Mor. Corp. 516; note; 53 Am. Dec. 637; Wayne Pike Co. vs. Hammons, 129 Ind. 368; 27 N. E. 487.

"The liability of officers to the corporation for damages caused by negligent or unauthorized acts rests upon the common-law rule, which renders every agent liable who violates his authority or neglects his duty to the damage of his principal."

North Hudson Mut. Buld'g & Loan Ass'n. vs. Childs, 82 Wis. 460; 52 N. W. 600, 605.

"Bank directors are often styled 'trustees,' but not in any technical sense. The relation between the corporation and them is rather that of principal and agent."

Briggs vs. Spaulding, 141 U. S. 132; 11 Sup. Ct. 924, 929.

"It is by no means a well-settled point what is the precise relation which directors sustain to stockholders. They are, undoubtedly said in many authorities to be trustees; but that, as I apprehend, is only in a general sense, as we term an agent or any other bailee intrusted with the care and management of the property of another. It is certain that they are not technical trustees. They can only be regarded as mandataries, —persons who have gratuitously undertaken to perform certain duties, and who are therefore bound to apply ordinary care and diligence, and no more."

Per Sharswood, J., in Spring's Appeal, 71 Pa. St. 11.

From this relation, their duties under the general rules of trustees prohibit them from making any profit out of the corporation that is not enjoyed in common by all the other stockholders.

Arkansas Val. Agr. Soc. vs. Eicholtz, 45 Kan. 164; 25 Pac. 613.

"By assuming the office, he undertakes to give his best judgment, in the interests of the corporation, in all matters in which he acts for it, untrammelled by any hostile interest in himself or others. There is an inherent obligation on his part that he will in no manner use his position to advance his own interest as an individual, as distinguished from that of the corporation. And all secret profits derived by him in any dealings in regard to the corporate enterprise must be ac-

counted for to the corporation, even though the transaction in which they were made also advantaged the corporation of which he was director."

Bird Coal & Iron Co. vs. Humes, 157 Pa. St. 278; 27 Atl. 750; *Koehler vs. Oron Co.*, 2 Black, 715; *Farmers' & Merchants' Bank vs. Downey*, 53 Cal. 466; *Parker vs. Nickerson*, 112 Mass. 195; *Wardell vs. Railroad Co.*, 103 U. S. 651; *Cook vs. Sherman*, 20 Fed. 167; *Perry vs. Cotton-Seed Oil-Mill Co.*, 93 Ala. 364; 9 So. 217; *Flint & P. M. Ry. Co. vs. Dewey*, 14 Mich. 477; *Rutland Electric Light Co. vs. Bates*, 68 Vt. 579; 35 Atl. 480.

Where stockholders were held barred of relief by reason of laches.

Compare *Keeney vs. Converse*, 99 Mich. 316; 58 N. W. 325.

To illustrate: Directors by reason of their position can not have security for their debts above other creditors when the concern is in a failing condition.

Koehler vs. Oron Co., *supra*.

A bank president sought to prefer himself and profit by loaning the moneys of the bank to an individual to purchase lands with the secret agreement that he should have a part of the profits when the lands were sold. It was held that the profits belonged to the bank and that the bank president was guilty of breach of trust. This doctrine does not apply where there is no duty on the part of an officer of a corporation who enters into the transaction. An officer or director may purchase property and sell it to the corporation for profit if he was not under any obligation to the corporation when he made the purchase.

1 Mor. Corp. 521; *St. Louis, Ft. S. & W. R. Co. vs. Chenault*, 36 Kan. 51; 12 Pac. 303.

This doctrine applies to an execution sale.

Hoyle vs. Railroad Co., 54 N. Y. 595.

If the purchase is in good faith as an execution sale on the part of the officer, it will be upheld.

Saltmarsh vs. Spaulding, 147 Mass. 224; 17 N. E. 316; *Watt's Appeal*, 78 Pa. 370.

§ 230. Transactions Between the Company and the Officers Themselves.

The question has reached the courts whether an officer of a corporation can act the part of the corporation and also for himself in a single given transaction, and whether they can convey the property of the corporation to themselves. It would appear to be very unreasonable to think that the frailties of humankind could resist the temptation of profit to themselves, where a transaction was to be made where self interest was arrayed on the one side and a remote interest or duty on the other. As self-protection is the first law of life, so self-interest is the first law of business, and it has been held, therefore, that such an act can not be done for want of parties to the transaction. The Supreme Court of Wisconsin, in passing upon the question, by Orton, J., said:—

“The idea that the same persons constitute different identities of themselves by being called directors or officers of a corporation, so that, as directors or officers, they can convey or mortgage to or contract with themselves as private persons, is in violation of common sense.”

Haywood vs. Lumber Co., 64 Wis. 639; 26 N. W. 184, 187; People vs. Township Board of Overysse, 11 Mich. 222.

Miner vs. Ice Co., 93 Mich. 97, 53 N. W. 218.

One way by which an agent of a corporation can act both for himself and for the corporation is when he may be authorized to do so by a superior authority.

1 Mor. Priv. Corp. 527; Louisville, N. A. & C. Ry. Co. vs. Carson, 151 Ill. 444; 38 N. E. 140.

Neither can a person act for himself and the agent of the seller. As was said by the Supreme Court of the United States:—

“The two positions impose different obligations, and their union would at once raise a conflict between interest and duty; and, constituted as humanity is, in the majority of cases duty would be overborne in the struggle.”

Wardell vs. Railroad Co., 163 U. S. 651.

Relief will, therefore, always be granted to the aggrieved party, if application to the court is seasonably made.

Wardell vs. Railroad Co., *supra*.

"They can not, as agents or trustees, enter into nor authorize contracts on behalf of those for whom they are appointed to act, and then personally participate in the benefits."

Goodin vs. Canal Co., 18 Ohio St. 169; Wardell vs. Railroad Co., 163 U. S. 651; United States Rolling-Stock Co. vs. Atlantic & G. W. R. Co., 34 Ohio St. 450; Flint & P. M. R. Co. vs. Dewey, 14 Mich. 477; Gilman, C. & S. R. Co. vs. Kelly, 77 Ill. 426; Alling vs. Wenzell, 27 Ill. App. 511; Gallery vs. National Exch. Bank, 41 Mich. 169; 2 N. W. 193.

It may be laid down as a general proposition with regard to the profits made by the officers of a corporation, or any other agents with their principal, that if the transaction is allowed to stand at all, it will be most carefully scrutinized by the courts if an action is brought to set it aside, and in order to stand it must be fair and free from fraud.

Parker vs. Nickerson, 112 Mass. 195; Smith vs. Association, 78 Cal. 289; 20 Pac. 677; Jones vs. Morrison, 31 Minn. 140; 16 N. W. 854; Copeland vs. Manufacturing Co., 47 Hun. (N. Y.) 235; Davis vs. Railway Co., 22 Fed. 883; Miner vs. Ice Co., 93 Mich. 97; 53 N. W. 218.

The personal interests of those who profit out of such transactions can not be shielded behind the fact that there are other parties to the contract who occupy no fiduciary relation to the corporation.

Munson vs. Railway Co., 103 N. Y. 58; 8 N. E. 355.

Instances of this character may be cited where a contract is made with a firm, and one of the firm is a director also of the corporation, or the party is a stockholder in two corporations and transacts the business.

Aberdeen Ry. Co. vs. Blakie, 1 Macq. 461; Parker vs. Nickerson, 112 Mass. 195; Gilman, C. & S. R. Co. vs. Kelly, 77 Ill. 426; Wardell vs. Railroad Co., 103 U. S. 651.

Nor the same set of directors of two corporations can not contract as between transactions of the two corporations.

United States Rolling-Stock Co. vs. Atlantic & G. W. R. Co., 34 Ohio St. 450.

Contract with a construction company where one or more of the directors are also directors of the construction company.

See Thomas vs. Railway Co., 2 Fed. 877; Id., 109 U. S. 522; 3 Sup. Ct. 315; Pearson vs. Railroad Corp., 62 N. H. 537; Barr vs. Railroad Co., 125 N. Y. 263; 26 N. E. 145; Gilman, C. & S. R. Co. vs. Kelly, 77 Ill. 426.

A long line of decisions, however, holds that directors or other officers may contract with the corporation if the corporation is represented by other agents, and the contract is a necessary contract for the corporation, sanctioned by the board of directors (not including the director who makes the contract, in that he can not legally act), and that the contract is open, fair, and free from fraud.

1 Mor. Priv. Corp. 527; Twin-Lick Oil Co. vs. Marbury, 91 U. S. 587; Barr vs. Plate-Glass Co., 6 C. C. A. 260; 57 Fed. 86; Beach vs. Miller, 130 Ill. 162; 22 N. E. 464; Roseboom vs. Whittaker, 132 Ill. 81; 23 N. E. 339; Mullanphy Sav. Bank vs. Schott, 135 Ill. 665; 26 N. E. 640; Louisville, N. A. & C. Ry. Co. vs. Carson, 151 Ill. 444; 38 N. E. 140; Ten Eyck vs. Railroad Co., 74 Mich. 226; 41 N. W. 905; Hallam vs. Hotel Co., 56 Iowa 178; 9 N. W. 111; Garrett vs. Plow Co., 70 Iowa 697; 29 N. W. 395; Buell vs. Buckingham & Co., 16 Iowa 284; Gorder vs. Canning Co., 36 Neb. 548; 54 N. W. 830; Parker vs. Nickerson, 137 Mass. 487; Holt vs. Bennett, 146 Mass. 437; 16 N. E. 5; Saltmarsh vs. Spaulding, 147 Mass. 224; 17 N. E. 316.

In *Twin-Lick Oil Co. vs. Marbury*, 91 U. S. 587, the Supreme Court of the United States said:—

“It can not be maintained that any rule forbids one director among several from lending money to the corporation when the money is needed, and the transaction is open and otherwise free from blame. No adjudged case has gone so far as this. Such a doctrine, while it would afford little protection to the corporation against actual fraud or oppression,

would deprive it of the aid of those most interested in giving aid judiciously and best qualified to judge of the necessity of that aid and of the extent to which it may safely be given."

Thomas vs. Railway Co., 109 U. S. 522; 3 Sup. Ct. 315; Hallam vs. Hotel Co., 56 Iowa 178; 9 N. W. 111; Hubbard vs. Investment Co., 14 Fed. 675; Meeker vs. Iron Co., 17 Fed. 48; Wilkinson vs. Bauerle, 41 N. J. Eq. 635; 7 Atl. 514; Jones vs. Morrison, 31 Minn. 140; 16 N. W. 854.

Some State courts, however, have adopted a more rigid rule; for instance, in the State of New York, it is held that such a contract is voidable at the option of the corporation.

Aberdeen Ry. Co. vs. Blakie, 1 Macq. 461; Munson vs. Railway Co., 103 N. Y. 58; 8 N. E. 355; Hoyle vs. Railroad Co., 54 N. Y. 314; Pearson vs. Railroad Corp., 62 N. H. 537; Hoffman Steam Coal Co. vs. Cumberland Coal & Iron Co., 16 Md. 456.

These courts hold that the law does not inquire whether the transaction is fair or not, and that it is often beyond the power of the court to know or inquire into the motives, or scrutinize the far-reaching unfairness of the transaction, and that it is better to stop it in its inception.

Contracts of the character just mentioned, even though they could be said to be tainted with fraud, if within the power of the corporation to make them, are not *per se* void, but are contracts nevertheless until voided at the election of the corporation or of stockholders.

Barr vs. New York L. E. & W. R. Co., 125 N. Y. 263; 26 N. E. 145; Twin-Lick Oil Co. vs. Marbury, 91 U. S. 587; Hoyle vs. Railroad Co., 54 N. Y. 314.

Such contracts do not need ratification, and if they were within the power of the corporation to authorize and the corporation takes the benefit of the contract with knowledge of the facts, they are bound and they can not afterward void such contracts.

Meeker vs. Iron Co., 17 Fed. 48; Barr vs. Railroad Co., 125 N. Y. 263; 26 N. E. 145; Louisville N. A. & C. Ry. Co. vs. Carson, 151 Ill. 444; 38 N. E. 140; Welch vs. Bank, 122 N. Y. 177; 25 N. E. 269; Hotel Co. vs. Wade, 97 U. S. 13.

Should the corporation at any time desire to void a contract of this character, they must act promptly upon discovery of the fraud and within a reasonable time, otherwise they will be barred by laches.

Twin-Lick Oil Co. vs. Marbury, 91 U. S. 587; United States Rolling-Stock Co. vs. Atlantic & G. W. R. Co., 34 Ohio St. 450; Keeney vs. Converse, 99 Mich. 316; 58 N. W. 325.

Where a contract is entered into and all who are interested in the corporation concur and the property is kept and used, the rule stated does not apply.

Battelle vs. Pavement Co., 33 Minn. 89; 33 N. W. 327; Barr vs. Glass Co., 6 C. C. A. 260; 57 Fed. 86.

If the contract is voided and the corporation has received any benefit from it, the corporation will be compelled to account for whatever benefit it has received.

Thomas vs. Railroad Co., 109 U. S. 522; 3 Sup. Ct. 315; Wardell vs. Railroad Co., Fed. Cas. No. 17, 164.

§ 231. Official Liability to Corporation.

All of the subordinate officers of a corporation as well as the directors are supposed to act toward the corporation in perfect good faith, and if they abuse their position of trust toward the corporation, they are liable for any loss the corporation may sustain. This abuse may arise first by exceeding their authority; second, they may exceed the power of the corporation; third, they may misapply funds of the corporation; fourth, they may act in such a gross, negligent, and inattentive manner toward the business entrusted to them, and become liable to the corporation. They are not liable to any extraordinary efforts any more and no further than a reasonable, prudent business man would perform his own duties and attend to his own transactions. They are not liable for thefts nor error of judgments nor mistakes where good faith attends the transactions. They are not liable for the omission of other officers or agents where they are not connected therewith or interested therein. It is otherwise, however, if they have been connected with them in the transaction or inter-

ested therein. For illustration of mistakes and errors of judgment:—

Spering's Appeal, 71 Pa. St. 11; 10 Am. Rep. 684; 1 Cumming Cas. Priv. Corp. 799; Watts' Appeal, 78 Pa. St. 370; Hun. vs. Cary, 82 N. Y. 65; 37 Am. Rep. 546; Hodges vs. Screw Co., 1 R. I. 312; 53 Am. Dec. 624.

They are not liable for declaration of dividends where there is no bad faith attending.

Excelsior Petroleum Co. vs. Lacey, 63 N. Y. 422; Van Dyck vs. McQuade, 86 N. Y. 38; Lexington & O. R. vs. Bridges, 7 B. Mon. (Ky.) 556.

For illustrations of non-labile for accident, theft, etc.—

Mowbrey vs. Antrim, 123 Ind. 24; 23 N. E. 858.

For authorities holding directors liable for breach of trust, and making them personally make good the loss, see,—

Robinson vs. Smith, 3 Paige (N. Y.) 222; 24 Am. Dec. 212; Heath vs. Railway Co., Fed. Cas. No. 6, 306; Perry vs. Oil-Mill Co., 93 Ala. 364; 9 South 217; Ellis vs. Ward, 137 Ill. 509; 25 N. E. 530; Horn Silver Min. Co. vs. Ryan, 42 Minn. 196; 44 N. W. 56; Gratz vs. Redd, 4 B. Mon. (Ky.) 178, 195; Wilkinson vs. Bauerle, 41 N. J. Eq. 635; 7 Atl. 514.

For *ultra vires* acts, see—

Hun vs. Cary, 82 N. Y. 65; 37 Am. Rep. 546; Hodges vs. Screw Co., 1 R. I. 312; 53 Am. Dec. 624.

For want of due care:—

Hodges vs. Screw Co., *supra*; Williams vs. McDonald, 37 N. J. Eq. 409.

For gross negligence and intention:—

Robinson vs. Smith, 3 Paige (N. Y.) 222; 24 Am. Dec. 212; Brinckerhoff vs. Bostwick, 88 N. Y. 152; Marshall vs. Bank, 85 Va. 676; 8 S. E. 586; 17 Am. St. Rep. 84; Delano vs. Case, 17 Ill. App. 531; 121 Ill. 247; 12 N. E. 676; United Society of Shakers vs. Underwood, 9 Bush (Ky.) 609; 15 Am. Rep. 731; President, etc. of Bank of Mutual Redemption vs. Hill, 56 Me. 385; Neall vs. Hill, 16 Cal. 145; Horn Silver Min. Co. vs. Ryan, 42 Minn. 196; 44 N. W. 56; Gratz vs. Redd, 4 B. Mon. (Ky.) 178, 195.

For a case where negligence was the question and officers and directors held not liable:—

Briggs vs. Spaulding, 141 U. S. 132; 11 Sup. Ct. 924;
2 Cumming Cas. Priv. Corp. 186; Shep. Cas. Corp. 200.

Where there was no bad faith, but negligence:—

Marshall vs. Bank, 85 Va. 676; 8 S. E. 586.

For case where a board of directors sought, in violation of their own duty, to shield the cashier from wrongful acts and avoid liability upon his bond.

Minor vs. Bank, 1 Pet. 46.

Officers not bound for extraordinary care and diligence.

Briggs vs. Spaulding, 141 U. S. 132; 11 Sup. Ct. 924;
2 Cumming Cas. Priv. Corp. 186; Shep. Cas. Corp. 200.

As was said in New York:—

“When one voluntarily takes the position of trustee or director of a corporation, good faith, exact justice, and public policy unite in requiring of him such a degree of care and prudence, and it is a gross breach of duty—*crassa negligentia*—not to bestow them. It is impossible to give the measure of culpable negligence for all cases, as the degree of care required depends upon the subjects to which it is to be applied. What would be slight neglect in the care of a quantity of iron might be gross neglect in the care of a jewel. What would be slight neglect in the care exercised in the affairs of a turnpike corporation, or even of a manufacturing corporation, might be gross neglect in the care exercised in the management of a savings bank.”

Hun vs. Cary, 82 N. Y. 65, 71; 37 Am. Rep. 546.

For cases of gross negligence.

Hun vs. Cary, *supra*; Scott vs. Depeyster, 1 Edw. Ch. (N. Y.) 513, 543; Spering's Appeal, 71 Pa. St. 11; 10 Am. Rep. 684; 1 Cumming Cas. Priv. Corp. 799; Hodges vs. Screw Co., 1 R. I. 312; 53 Am. Dec. 624; Marshall vs. Bank, 85 Va. 676; 8 S. E. 586; Williams vs. McCay, 40 N. J. Eq. 189; North Hudson Mut. Bldg. & Loan Assn. vs. Childs, 82 Wis. 460; 52 N. W. 600, 605; Horn Silver Min. Co. vs. Ryan, 42 Minn. 196; 44 N. W. 56.

In Scott vs. Depeyster, *supra*, it was said:—

“I think the question in all such cases should and must

necessarily be whether they (directors) have omitted that care which men of common prudence take of their own concerns. To require more would be adopting too rigid a rule, and rendering them liable for slight neglect; while to require less would be relaxing too much the obligation which binds them to vigilance and attention in regard to the interests of those confided their care, and expose them to liability for gross neglect only, which is very little short of fraud itself."

In *Spering's Appeal*, *supra*, Judge Sharswood said:—

"They (directors) can only be regarded as mandataries,—persons who have gratuitously undertaken to perform certain duties, and who are therefore bound to apply ordinary skill and diligence, but no more."

Directors are not insurers of fidelity of agents.

Briggs vs. Spaulding, 141 U. S. 132; 11 Sup. Ct. 924, 929; *Shep. Cas. Corp.* 200.

§ 232. Remedies Against Officers and Agents of the Corporation.

Where the officers or agents of a corporation are negligent and act fraudulently or wrongfully, the law provides a remedy by and through which the corporation may recover such compensation and damages as would make good the loss that is sustained. Proper action in such cases is before a court of equity to call such an officer to account and for damages. For cases where officers have been compelled to account for acts of negligence, see,—

Franklin Fire Ins. Co. vs. Jenkins, 3 Wend. (N. Y.) 130; *Horn Silver Min. Co. vs. Ryan*, 42 Minn. 196; 44 N. W. 56.

Where stockholders have called the directors to account for breach of trust.

Robinson vs. Smith, 3 Paige (N. Y.) 222; 24 Am. Dec. 212; *Brinckerhoff vs. Bostwick*, 88 N. Y. 52; *Hodges vs. Screw Co.*, 1 R. I. 312; 53 Am. Dec. 624.

It is more proper for a corporation itself to bring the action, but if it fails to do so, a stockholder may sue in equity for the benefit of the corporation.

Robinson vs. Smith, 3 Paige (N. Y.) 222; 24 Am. Dec.

212; *Horn Silver Min. Co. vs. Ryan*, 42 Minn. 196; 44 N. W. 56; *Greaves vs. Gouge*, 69 N. Y. 154; *Brinckerhoff vs. Bostwick*, 88 N. Y. 52; *Hodges vs. Screw Co.*, 1 R. I. 312; 53 Am. Dec. 624; *Heath vs. Railway Co.*, 8 Blatchf. 347; *Fed. Cas. No. 6,306*; *Hersey vs. Veazie*, 24 Me. 9; *Mussina vs. Goldthwaite*, 34 Tex. 125; *Wayne Pike Co. vs. Hammons*, 129 Ind. 368; 27 N. E. 487.

There is no privity of contract between the directors and stockholders. The directors' relation is to the corporation, and it must sue.

Smith vs. Hurd, 12 Metc. (Mass.) 371; 46 Am. Dec. 690.

The same benefit, where the corporation is insolvent, reaches over and belongs to creditors. It is a fund to which they may resort in such case, and sue for negligence of fraud upon the corporation.

§ 232a. Statute of Limitation.

Statutes of limitation do not run against fiduciary relation, and the relation of officers of the corporation to the corporation is a fiduciary relation.

Ellis vs. Ward, 137 Ill. 509; 25 N. E. 530.

§ 233. Contract Liability of Officers and Agents.

The liability of officers and agents of the corporation is the same as the liability of the agents of the individual where the agents making the contract would be liable to their principal, being an individual.

"If one falsely represents that he has an authority by which another, relying on the representation, is misled, he is liable; and by acting as agent for another when he is not, though he thinks he is, he tacitly and impliedly represents himself authorized, without knowing the fact to be true, it is in the nature of a false warranty, and he is liable. But in both cases his liability is founded on the ground of deceit, and the remedy is by action of tort."

Jefts vs. York, 10 Cush. (Mass.) 392; *Farmers' & Mechanics' Bank vs. Colby*, 64 Cal. 352; 28 Pac. 118.

The rule of the liability of the principal for the acts of his agents is broadly stated by Mr. Justice Story:—

"A principal is to be held liable to third persons, in a civil suit, for the frauds, deceits, concealments, misrepresentations, negligences, and other malfeasances and omissions of duty of his agent in the course of his employment, although the principal did not authorize or justify or participate in, or, indeed, know of, such misconduct, or even if he forbade the acts, or disapproved of them. In all such cases the rule applies, *respondeat superior*, and is founded upon public policy and convenience; for in no other way could there be any safety to third persons in their dealing, either directly with the principal, or indirectly with him, through the instrumentality of agents. In every such case the principal holds out his agent as competent and fit to be trusted, and thereby, in effect, he warrants his fidelity and good conduct in all matters within the scope of his agency."

Story, Ag. 452; Fifth Ave. Bank of New York vs. Forty-second St. & Grand St. Ferry R. Co., 137 N. Y. 231; 33 N. E. 378; Philadelphia W. & B. R. Co. vs. Quigley, 21 How. 207; 1 Cumming Cas. Priv. Corp. 453; Denver & R. G. Ry. vs. Harris, 122 U. S. 597; 7 Sup. Ct. 1286; Salt Lake City vs. Hollister, 118 U. S. 256; 6 Sup. Ct. 1055; 3 Cumming Cas. Priv. Corp. 107; State vs. Morris & E. R. Co. 23 N. J. Law 369.

§ 234. Liability of Officers and Agents to Third Persons for Frauds.

The question of the liability of officers of the corporation and third persons for torts and other wrongs committed in their individual capacity is a matter outside of whether the corporation itself is also liable for the wrongful conduct. The rule is that the officers of the corporation are themselves liable for all acts of fraud as individuals. This liability they can not shield behind the fact that they are an agent of the corporation. They are themselves liable upon the sole ground that they are guilty of a tort or wrongful act, and their liability does not rest upon any matter of contract. It rests solely upon the fact of the tort committed.

Salmon vs. Richardson, 30 Conn. 360; Cowley vs. Smyth, 46 N. J. Law 380; Clark vs. Edgar, 84 Mo. 106; Schley vs. Dixon, 24 Ga. 273; Zinn vs. Mendel, 9 W. Va. 580.

Where the boards of directors or other officers of the corporation issue false statements concerning its financial standing or of its property, or false statements in a prospectus whereby persons are induced to buy stock, or make other contracts with the corporation to their injury, this will render the directors liable.

Morgan vs. Skiddy, 62 N. Y. 319; Westervelt vs. Demarest, 46 N. J. Law 37.

These cases rest upon the specific fact of false representation or deceit by the directors or officers, and it is only sufficient to fix the liability of such officers and agents that the false representation or deceit come within the rules of any other false representation or deceit in law. It must be fraudulent, known to be false, or made in wilful or reckless disregard, whether it was true or false.

Wakeman vs. Dalley, 51 N. Y. 27; Arthur vs. Griswold, 55 N. Y. 400; Cowley vs. Smith, 46 N. J. Law 380; Cole vs. Cassidy, 138 Mass. 437; Zinn vs. Mendel, 9 W. Va. 580.

The action will fail if the person who brings the action did not rely upon the representations or did not sustain any injury thereby.

Wakeman vs. Dalley, 51 N. Y. 27.

§ 235. Officers, Compensation of.

It is the settled law that if an officer or agent of corporation perform the duties of the corporation as defined by its charter or by-laws that no compensation can be recovered, and before he can have compensation for his services, there must be a contract between him and the corporation that he shall receive pay for his services.

Citizens' Nat. Bank vs. Elliott, 55 Iowa 104; 7 N. W. 470; American Cent. Ry. Co. vs. Miles, 52 Ill. 174; Cheeney vs. Railway Co., 71 Ill. 106; New York & N. H. R. Co. vs. Ketchum, 27 Conn. 170.

Such an officer can not recover upon an implied agreement what his services are reasonably worth.

See authorities *supra*.

The rule is different where an officer performs extraordinary services, that is to say, does work for the corporation outside of his regular and usual duties, at their request. To illustrate, where an attorney-at-law was a director of the corporation, and at the request of the corporation performed legal services for the company, it was held that he was entitled to the reasonable value of what his services were worth.

Ten Eyck vs. Railroad Co., 74 Mich. 226; 41 N. W. 905;
Cheeney vs. Railway Co., 68 Ill. 570; Lafayette, B. &
M. Ry. Co. vs. Cheeney, 87 Ill. 446.

The board of directors alone have the power to fix the compensation for the officers of the corporation, unless such authority is otherwise delegated by the charter or by-laws, or fixed by the charter or by-laws. It must not be understood from these suggestions that the board of directors has an unlimited authority. Each and every act of the board of directors must be in good faith and for the benefit of the corporation. They must not transcend their power. They can not pay claims that the company is under no obligation to pay. They can not raise the salary of officers after it is fixed, that is to say, they can not pay an officer for his back services where the compensation for those services has already been fixed.

Jones vs. Morrisen, 31 Minn. 140; 16 N. W. 854.

The rule above announced does not apply to the mere agents, servants, or minor helpers in and about the corporate business. They, in the absence of express agreement, have a right to such compensation as their services are reasonably worth.

Spence vs. Whitaker, 3 Port. 297; Waller vs. Bank of Kentucky, 31 J. J. Marsh. 206; Goodwin vs. Union Screw Co., 34 N. H. 378; Bill vs. Darenth Valley R. R. Co., 1 Hurl. & N. 305.

Whether the officers of the corporation can fix their own salaries depends where there is no charter or by-law regulating the matter, or on the question of the good faith and fairness of the transaction. If it is fair and free from fraud, it

will be sustained, but if it is manifestly unfair, it will be set aside at the election of the corporation.

Jones vs. Morrison, 31 Minn. 140; 16 N. W. 854.

It has been held that an officer may vote on a question or resolution fixing his salary.

Jones vs. Morrison, 31 Minn. 140; 16 N. W. 854; Miner vs. Ice Co., 93 Mich. 97; 53 N. W. 218.

§ 236. Removal of Officers and Agents.

A corporation has the right to remove any officer for incompetency or where he violates his contract where he has a contract for a fixed term, and inferior officers or agents may be removed at the pleasure of the corporation or those appointing him.

1 Thomp. Corp. 802, 805.

If there is a contract between the officers and the corporation for a fixed time, such an officer can not be removed except for cause, for that this would be a breach of the contract on the part of the corporation. The corporation, however, can always remove an officer or revoke his authority, even though it may be liable for a breach of its contract.

1 Thomp. Corp. 805.

If an officer's tenure of office is fixed by the charter, and there is no provision for removal, the officer will hold his term until it expires. There is no power in the board of directors to remove him, or if an officer is limited by the stockholders, they are higher power than the board of directors, and the board of directors have no authority to remove him.

1 Thomp. Corp. 804.

§ 237. Privity Between Officers and Stockholders.

The rule or law is that there is no privity or relation between corporate officers and the stockholders. That relation exists between the officers and the corporation. The officers did not hold any fiduciary relation between themselves and the stockholders. The officers of a corporation are often spoken of as being trustees for the stockholders. This, how-

ever, is not true. They are the mere agents of the corporation. There is no privacy or relation existing between agents of a corporation and its stockholders. As was said by Justice Shaw:—

“There is no legal privacy, relation, or immediate connection between the stockholders of shares in a bank, in their individual capacity, on the one side, and the directors of the bank on the other. The directors are not the bailees, the factors, agents, or trustees of such individual stockholders.”

Smith vs. Hurd, 12 Metc. (Mass.) 371; 1 Cumming Cas. Priv. Corp. 792.

If there is any loss, it is by virtue of the relation between the officers and the corporation, and the cause of action primarily rests in the corporation, and it alone can sue for redress, as it alone is injured. As was said by the court in a Connecticut case, the directors of a bank,—

“are the agents of the bank. The bank is the only principal, and there is no such trust for or relation to a stockholder as has been claimed by the plaintiff. The entire duty of the directors, growing out of their agency, is owed to the bank, which, under the charter, is the sole representative of the stockholders, and the legal protector and defender of their property.”

Allen vs. Curtis, 26 Conn. 456; Smith vs. Hurd, 12 Metc. (Mass.) 371; 1 Cumming Cas. Priv. Corp. 792.

Nevertheless, the right rests primarily in the corporation, and if for any reason it refuses to act and bring an action for redress of wrongs, then the stockholders or any single stockholder may proceed thereon in his own name.

Dodge vs. Woolsey, 18 How. 331; Bacon vs. Robertson, 18 How. 480; 1 Cumming Cas. Priv. Corp. 468; Hardon vs. Newton, 14 Blatchf. 376; Fed. Cas. No. 6,054; 1 Cumming Cas. Priv. Corp. 487

CHAPTER XX.

AMENDMENT TO ARTICLES OF INCORPORATION.

§ 238. Fundamental Requisites Amended.

In the formation of a corporation the conditions precedent or the fundamental requirements of the statute must be complied with before a corporation can be formed.

The amendment of a corporation refers to the change in some form of one or more of these fundamental statutory requisites.

Among the usual fundamental requisites are:—

1. Corporate name.
2. Domiciliary office.
3. Increase or decrease of capital stock.
4. Principal place of business.
5. Extension of corporate existence.
6. Purposes of corporation.
7. Number of directors.
8. Par value of shares.

To change any one or more of these conditions precedent or any other fundamental statutory requirement as expressed in the articles, requires legislative sanction or the joint act of the State, by and through its laws, and the stockholders or officers, according to the statute of the State of formation.

Corporations have no power to change their name without statutory authority.

C. D. & Ry. vs. Keisel, 43 Ia. 39; Sykes vs. People, 23 N. E. (Ill.) 391; Glass Co. vs., 32 Ind. 376.

Nor increase or decrease the capital stock without legislative sanction.

Pullman vs. Upton, 96 U. S. 328; Ins. Co. vs. Kamper, 73 Ala. 325; Southerland vs. Alcott, 95 N. Y. 93; Crandall vs. Lincoln, 52 Conn. 73; Palmer vs. Bank, 72 Minn. 266; Detroit C. C. vs. State S., 119 Mich. 691.

The stockholders in most jurisdictions have the power to increase capital stock by statutory amendment.

Abbott vs. Co., 33 Barb. (N. Y.) 583; State vs. Afterdol, 72 Minn. 488; 75 N. W. 692; C. C. Ry. vs. Allerton, 18 Wall (U. S.) 233; Gill vs. Boyless, 72 Mo. 424; Allesheimer vs. Mnfg. Co., 44 Mo. App. 172; Clough vs Co., 55 Pac. (Cal.) 809; Com. vs. Cullen, 13 Pa. St. 133.

Change of principal place of business requires an amendment.

Kennet vs. Co., 39 Atl. (N. H.) 585; Harris vs. McGregor, 29 Cal. 124; Stickle vs. L. C. M. Co., 32 Atl. (N. J. Eq.) 708.

The principal place of business and the principal place of transacting business are not one and the same place.

Harris vs. McGregor, *supra*; Van Elton vs. Eaton, 19 Mich. 187; McConnell vs. Co., (Mont.) 74 Pac. 194.

The change of agent does not need the sanction of statute unless his naming is a "condition precedent" in the articles.

Johnson vs. Mason, L. 51 S. W. (Ky.) 620.

Changing number of directors if conditions precedent require amendment.

Matter of G-I Co., 63 N. J. L. 158, 357; 41 Atl. 9311; 46 Atl. 1097.

Changing the business or the purpose of the corporation in its entirety can not be done by amendment, as that would be a method of incorporation by amendment and thus dodge the statutory fees for incorporating.

State vs. Taylor, 53 Ia. 759; In Re Bottling Co., Penn. County Court Rep. 593; 6 N. W. 39.

However, even when fundamental changes are effected in the purposes, still the courts are favoring such by amendments.

Meredith vs. Co., 59 N. J. Eq. 257; 44 Atl. 55.

The right of amendment depends upon the power granted by the State in such cases, and in construing the statutes allowing amendments, courts are not so rigid as formerly.

Golder vs. Bressler, 105 Ill. 419; Hope vs. Ins. Co., 47 Mo. 93; Spriggs vs. Co., 46 Md. 67; Day vs. Co., 75 Ia. 694; 38 N. W. 113; Det Chain Com. vs. Sec. State,

109 Mich. 691; *Mercantile Statment Co. vs. Kneal*, 51 Minn. 263; *People vs. Green*, 116 Mich. 505.

It has been shown that the stockholders are the proper authority to change the purposes of the corporation, but can they do so if a minority object and contest the right?

In *Buffalo vs. N. Y. City Ry. Co. vs. Dudley*, 14 N. Y. 342, where the majority sought to change the name of the road and extend its lines by amendment, the court allowed the change over the objection of a minority protest, and said:—

“The stock subscription having been valid so as to give a right of action in case of non-payment to the corporation, did the alteration of the charter and the extension of the road subsequently absolve the defendant from his liability upon such subscription? The right to alter was reserved in the charter, and the subscription must be taken to have been made subject to having such additional powers conferred as the Legislature might deem essential and expedient. The change is not fundamental. The new powers conferred are identical in kind with those originally given. They are enlarged merely, the general objects and purposes of the corporation remaining still the same. It may be admitted that under this reserved power to alter and repeal, the Legislature would have no right to change the fundamental character of the corporation and convert it into a different legal being, for instance a banking corporation, without absolving those who did not choose to be bound. But this they have not attempted to do. The additional powers are of the same character and have been regularly acquired from a legitimate source of power, and if they had been fairly exercised, the defendant, although the change may have operated to his pecuniary disadvantage, is still bound by his undertaking. The whole matter is manifestly a question of power; and if the power was legitimately acquired and has been exercised without fraud, the rights of the parties are in no respect changed as between themselves whether the alteration is beneficial or injurious to the defendant's interest. Whether he has made or lost by the change in no respect affects the question of authority in the plaintiff.”

The right of the courts interfering in favor of the minority stockholders against the will of the majority in corporate matters is stated by the Supreme Court of New York thus:—

"The courts would not be justified in interfering even in doubtful cases, where the action of the majority might be susceptible to different constructions. (To warrant the interposition of the court in favor of the minority shareholders in a corporation or a joint stock association, as against the contemplated action of the majority where such action is within the corporate power, a case must be made out which plainly shows that such action is so far opposed to the true interests of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that he must have acted with an intent to subserve some outside purpose, regardless of the consequences to the company and in a manner inconsistent with its interests. Otherwise the court might be called upon to balance probabilities of profitable results to arise from the carrying out of the one or the other of the different plans proposed by or on behalf of the different shareholders in a corporation, and to decree the adoption of that line of policy which seemed to it to promise the best results, or at least to enjoin the carrying out of the opposite policy. This is no business of any court to follow.)"

· Gamble vs. Co., 123 N. Y. 91; 25 N. E. 201.

In defining the right of stockholders, the Supreme Court of Massachusetts said:—

"A holder of shares in an incorporated body, so far as his individual rights and interests may be involved in the doings of the corporation, acting within the legitimate sphere of its corporate power, has no other legal control over them than that which he can exercise by his single vote in the meetings of the company. To this extent he has parted with his personal right or privilege to regulate the disposition of that portion of his property which he has invested in the capital stock of the corporation, and surrendered it to the will of a majority of his fellow corporators. The *jus disponendi* is vested in them so long as they keep within the line of the general purpose and object for which the corporation was established, although their actions may be against the will of a minority however large. It can not, therefore, be justly said that the contract, express or implied, between the corporation and the stockholders is infringed or impaired by any act or proceeding of the former which is authorized by a majority and which comes within the terms of the original statute creating and establishing their franchise, and conferring on them capacity

to exercise control over the rights and property of their members. On the contrary, the fair and reasonable implication resulting from the legal relation of the stockholders and the corporation is that the majority may do any act either coming within the scope of the corporate authority or which is consistent with the terms and conditions of the original charter, without and even against the consent of an individual member."

Dupree vs. Ry. 5 Allen 230.

Speaking of a stockholder's right respecting an amendment, the same court further said:—

"The real contract into which the stockholder enters with the corporation is that he agrees to become a member of an artificial body which is created and has its existence by virtue of a contract with the Legislature, which may be amended or changed with the consent of the company, ascertained or declared in the mode pointed out by law. Having, by virtue of the relation which subsists between himself and the corporation as a holder of shares, assented to the terms of the original act of incorporation, he can not be heard to say that he will not be bound by vote of the majority of the stockholders accepting an amendment or alteration of the charter made in pursuance of an express authority reserved to the Legislature, and which by such acceptance has become binding on the corporation."

The statute having provided a right of amendment at the time the charter was procured, it enters into the contract as much as if it was written into it, and binds every stockholder when the right is promulgated by the proper number of stockholders.

Extension of corporate existence when the statute so provides must pay an organization tax, even though it be had by an amendment.

National Lead Co. vs. Dickinson, 57 Atl. (N. J.) 138.
Change of directors.

Under the various statutes the form of amendment varies according to the terms of the statutes under which the amendment is sought to be had or accomplished.

Under the laws of Arizona, amendment is a very simple

proceeding, and may be done at any time by a majority of the stock.

§ 239. Arizona Form.

AMENDMENT OF THE ARTICLES OF INCORPORATION OF THE NATIONAL COAL COMPANY.

Know all men by these presents:

That at a regular (or special) meeting of the stockholders of the National Coal Company, held at the office of said Company on the 10th day of October, A. D. 1905, the following amendment was adopted by an affirmative vote of the majority of the stockholders of said Company.

Resolved, That Articles I and VI of the Articles of Incorporation of the National Coal Company be amended so as to read as follows:—

Article I.—The name of this corporation shall be National Coal (Iron and Investment) Company.

Article VI.—The highest amount of liability to which this corporation shall subject itself at any one time shall not exceed one hundred thousand dollars (\$100,000).

In witness whereof, the President and Secretary of said Company have hereunto set our hands and seals this 10th day of October, A. D. 1905.

William Stone, President,

Attest: John Jones, Secretary.

State of Illinois }
County of Cook } ss.

Before me, James Mahoney (a Notary Public in and for said County and State), on this day personally appeared William Stone and John Jones, known to me to be the President and Secretary of the National Coal Company, and known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and considerations therein expressed.

Given under my hand and seal this 10th day of October,
A. D. 1905.

(SEAL)

James Mahoney,
Notary Public.

My commission expires March 19, 1907.

(Always be sure to have the Notary Public show when his commission expires.)

Par. 770, Amdt. by Session Acts 1903, p. 140.

The law requires an amendment to be acknowledged, recorded, and published precisely as original articles are required to be, but no more.

Par. 770, Amdt. by Session Acts 1903, p. 140.

The Arizona procedure covers probably the procedure of many States, where the stockholders make the amendment, but others require an amendment to be made by the board of directors and ratified by all or part of the stockholders. The various statutes differ in respect of detail in many instances.

§ 240. Form Where Board of Directors Make Amendment.

CERTIFIED RESOLUTION UPON PROPOSITION TO AMEND.

Be it remembered that at a regular meeting of the Board of Directors of the Leap to Light Mining Company, held on the day of 1905, at the office of the Company, Street, city of, county of, State of, the following resolution was introduced and was unanimously adopted as follows:—

Whereas, It is the wish of the stockholders of this corporation that the Articles of Incorporation be amended so as to provide for seven directors instead of five, as recited in the original Articles of Incorporation. Therefore be it—

Resolved, That the President and Secretary of this corporation be and they are hereby authorized, empowered, and directed to do all things necessary and proper to amend the Articles of Incorporation of this Company to the end that its board of directors shall thereafter consist of seven members.

Resolved, That the following shall be added to and hereafter constitute a part of paragraph numbered

That hereafter the number of directors or trustees of this corporation shall be seven instead of five, and the names and residences of the two additional directors, in addition to the five original provided for in the original Articles of Incorporation, and who are appointed to serve for the unexpired portion of the current corporate year, are as follows:—

Names.

Residences.

.....
.....

.....
.....

State of }
County of } ss.

This is to certify that the foregoing is a true and correct

copy of the resolution passed by the board of directors of the Company on the day of 1905, that the undersigned is President and Secretary of the said corporation, respectively.

(Signed) President.
 Secretary.
 (Corporate Seal)

AMENDMENT APPROVED.

We, the undersigned stockholders of the Company, who have subscribed for and own more than two thirds of the capital stock thereof, hereby and by these presents do assent to, confirm, and ratify the amendments of the Articles of Incorporation made by its board of directors on the day of, 1905.

Names of stockholders.	Number of shares owned.
.....
.....
.....

State of }
 County of } ss.

This is to certify that the above and foregoing assent of stockholders was by them duly made, signed, and filed in the office of the company on this day of, 1905, and the said parties are the owners and holders of more than two thirds of the capital stock of the said corporation, as appears by the books now in the custody of the undersigned.

(Signed) Secretary.
 (Corporate Seal)

The right of amendment has been much discussed by Legislatures and laws passed, and by the courts and decisions rendered. It was early held by the Supreme Court of the United States that the Legislature had no power to amend, alter, or repeal a corporate charter unless the power to do so was reserved in the act of incorporation.

The reason for this ruling is that a charter or articles are held to be a legislative contract within the protection of the federal constitution (sec. 10).

Dartmouth College vs. Woodward, 4 Wheat. 518.

In a separate concurring opinion, Story, J., said that—"when the Legislature was enacting a charter for a corpora-

tion, a provision in the statute reserving to the Legislature the right to amend or repeal, it must be held to be a part of the contract itself, and the subsequent exercise of the right would be in accordance with the contract and could not therefore impair its obligation."

Greenwood vs. Co., 105 U. S. 13.

Generally the courts will presume the Legislature acted properly where it has altered, amended, or repealed a charter or articles if the power to do so was reserved in the laws creating it.

Greenwood vs. Co., *supra*; Wagner F. I. vs. Pa., 132 Pa. St. 612.

The court will examine into the whole matter, however, and decide whether such legislative enactment was in violation of settled principles of justice.

Lathrop et al vs. Stedman, Fed. Cas. 8519.

The Legislature can not by altering, amending, or repealing a charter or article divest vested rights or destroy the very purpose of the grant or impair it.

N. J. Ry. vs. Town, 151 U. S. 556.

It would indeed be a dangerous power to even lodge in a Legislature the unlimited right to destroy corporate existence after it had once granted it the corporate franchise. Hence it is not an arbitrary authority, due and just respect must be given to the contracts of the State evidenced by and through its legislative enactments. Regard must be had for the just rights of others, the right of contract must be held inviolate.

The United States Court has laid down the limitation on the power of the Legislature in such cases, as follows:—

"That the power to alter or amend a charter even when reserved has a limit no one can doubt. All agree that it can not be used to take away the property already acquired under the operation of the charter or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made. It may safely be affirmed that the reserve power may be exercised to almost any extent to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of stockholders

and creditors, and for the proper distribution of its assets. Also to protect the rights of the public and of the incorporators or to promote the due administration of the affairs of the corporation. The alteration must, however, be reasonable. They must be made in good faith, and be consistent with the object and scope of the act of incorporation. Sheer oppression and wrong can not be inflicted under the guise of alteration or amendment."

U. P. Ry. Co. vs. U. S. 99 U. S. 700.

CHAPTER XXI.

EXTENSION OF CORPORATE LIFE.

§ 241. Corporate Existence Duration.

The extension of the duration of corporate existence depends on the laws of the State where the incorporation is procured. Some States fix a time when corporate existence expires. In all such cases if there is no statute allowing the extension of the corporate life by the stockholders or otherwise, then, of course, corporate existence lapses, as no inherent power exists in the stockholders to extend the time. It expires *ipso facto* by expiration of the contract or by limitation of law.

One case holds that corporate existence may be extended by amendment where the right of amendment is unlimited.

People vs. Green, 116 Mich. 505; 74 N. W. 714.

It appears to be considered in the nature of the forming a new corporation, as one State at least compels the payment of an organization tax when corporate existence is extended by amendment.

National Lead Co. vs. Dickinson, 57 Atl. (N. J.) 138.

Some of the States and Territories, like New Mexico, give the option of perpetual or limited duration as expressed in the Articles of Incorporation, then the right of amendment reaches that point and the duration may be extended to suit the incorporators if they failed to make it perpetual in the first instance.

Secs. 7 and 29, Laws of New Mexico, 1905.

Under the laws of Arizona, the duration of corporate existence may be extended by the stockholders indefinitely by majority vote of the stock at a meeting held for that purpose.

In order to extend corporate existence where this statutory method is in force it is necessary to call a stockholders' meeting and hold the meeting for the purpose of voting on whether

or not the corporate existence would be extended. The meeting may be a general or special stockholders' meeting.

Such a meeting to be legal would require, to wit:—

1. Must be a stockholders' meeting.

2. Duly called by notice.

3. Notice must contain the time, place, and must state particularly that the meeting is called for the purpose of voting to extend the life of the corporation, to renew the Articles of Incorporation.

4. A majority vote of the stock is sufficient to sanction corporate renewal.

Renewal is had by an amendment like the amendment of any other feature of the charter or articles.

R. S., par. 770, sec. 10, Session Acts 1903, p. 140.

The notice is no different from other notices, except it must state the precise purpose for which the meeting is called; i. e., to renew the Articles of Incorporation.

Perpetual existence is secured by renewals extending the time from time to time, indefinitely if a majority of stock so desire, and this amendment would be no different in character from any other amendment.

Perpetual existence is not a discussion with the incorporators in the first instance, owing to sec. 11, par. 771, R. S. Ariz., which fixes the time for which a corporation may be formed to endure at twenty-five years, but the right to amend this feature of the charter is given unlimited by Session Act 1903, p. 140, par. 770, sec. 10, as amended, which right of amendment would exist at each expiration of life named in the articles. The discretion of extension is given by amendment fully.

Where corporate life has been fixed at a given time and the right of amendment unlimited generally, even though the right to amend does not refer to duration, still the amendment can be used to extend the time.

People vs. Green, *supra*.

CHAPTER XXII.

VOTING TRUST.

§ 242. Voting Trust.

Voting trust, so-called, is in fact no more than a convenient means of avoiding giving proxies at stated intervals and giving a proxy for a long period of time, covering a series of years stated in the proxy.

In short, it is nothing more than appointing an agent to transact business for a longer or shorter period.

It is a plan by and through which those having large holdings can delegate the management of their property and avoid giving it their personal attention or supervision, or it enables the leading characters in the enterprise to shape and mold the policy of the business.

This method of controlling the management of corporate property by voting trust is sometimes called "pooling of stock."

Whether a voting trust can be made by stockholders may depend on whether the articles of agreement provide for a voting trust. Where the articles specially provide therefor, such voting trust has been sustained. If the voting trust was provided for in the articles, certainly then those who took stock in the corporation could not object, as that would be a part of their contract.

White vs. Co., 52 N. J. Eq. 178; 28 Atl. 75.

A voting trust is a contract between the stockholders or part of them, and unless some national policy is infringed or fraud occurs, why should such a contract be obnoxious?

No reason is perceived why such contracts should not be delt with upon the same grounds as any other contract.

The courts have decided both ways on voting trusts, that they were legal and illegal. Statutes have been passed against voting trusts, and again in turn repealed, all of which show

the lack of understanding, the fact that a voting trust was like any other contract and must be interpreted on the same footing that where there is no fraud people can make any contract to advance their interests.

Mr. Cook, an able writer on corporation law, reviews the authorities and reaches the conclusion—

“that a deposit of certificates of stock with trustees for a specified period of time, either with or without a transfer of the same to the trustees, is legal, and is not in violation of the usual statute against restraints on the alienation of personal property, and is not opposed to public policy, as a restraint upon trade, and is not an implied fraud upon stockholders who are not allowed to participate, and is not an illegal separation of the voting power from the ownership of the stock, provided always that no actual fraud is involved in the transaction. In other words, such a pooling of stock is not illegal in itself, but, like all contracts, may be illegal if actual fraud is involved.”

Just precisely how the rule here stated could be otherwise is difficult to see. Stockholders' rights are certainly on the same basis. The right of contract is alike. The right to control private property or one's own must surely be in the owner, and so long as he does not infringe the just rights of others, where is the wrong or injury? If there is no wrong or injury, where is the complaint going to take root? Most certainly people may make contracts about their property without legislative sanction or judicial leave, and still be right. It is an inalienable right.

§ 243. Voting Trusts Have Been Sustained By:—

Brightman vs. Bates, 175 Mass. 105; 55 N. E. 809; Brown vs. Steamship Co., 5 Blatchf. 525; Fed. Cas. No. 2,025; Havemayer vs. Havemeyer, 43 N. Y. Super. Ct. 506, affirmed 86 N. Y. 618; Williams vs. Montgomery, 148 N. Y. 519; 43 N. E. 57; Hey vs. Dolphin, 92 Hun. 230; 36 N. Y. Supp. 627; Chapman vs. Bates, 61 N. J. Eq. 658; 47 Atl. 638; 88 Am. St. Rep. 459; Mobile & O. R. Co. vs. Nicholas, 98 Ala. 92; 12 South 723; Ziegler vs. Railroad Co., C. C. 69 Fed. 176; Smith vs. Railroad Co., 115 Cal. 584; 47 Pac. 582; 35 L. R. A. 309; 56 Am. St. Rep. 119.

§ 244. Voting Trusts Have Been Condemned.

Starbuck vs. Co., 60 Conn. 576; 24 Atl. 32; Fisher vs. Bush, 35 Hun. (N. Y.) 641; Woodruff vs. Railroad Co., C. C. 30 Fed. 91; Cone vs. Russell, 48 N. J. Eq. 208; 21 Atl. 847; White vs. Tire Co., 52 N. J. Eq. 178; 28 Atl. 75; Clowes vs. Miller, 60 N. J. Eq. 179; 47 Atl. 345; Krissel vs. Distilling Co., 61 N. J. Eq. 5; 47 Atl. 471; Warren et al vs. Pim N. J. Ch., 55 Atl. 66; Vanderbilt vs. Bennett, 6 Pa. Co. Ct. R. 193; 2 Ry & Corp. Law J. 409; Harvy vs. Improvement Co., N. C. 2 S. E. 489; 32 L. R. A. 265; 54 Am. St. Rep. 749; Clark vs. Banking Co., C. C. 50 Fed. 338; 15 L. R. A. 683; Moses vs. Scott, 84 Ala. 608; 4 South 742; Hafer vs. Railroad Co., 14 Wkly. Law Bull. 68; State vs. Oil Co., 49 Ohio St. 147; 30 N. E. 279; 15 L. R. A. 145; 34 Am. St. Rep. 541; Ohio & M. Ry. Co. vs. State, 49 Ohio St. 668; 32 N. E. 933; Gould vs. Head, C. C. 38 Fed. 886.

The latter decisions rest on various grounds of invasions of rights or other wrongs. When it is considered that human action in organized society is in some form either immediate or remote a character of oppression, or invasion on some one's rights, or that whatever is done in any direction in special instances work a hardship or result in injury in individual cases. Then we are prepared to understand the voting trust may, and possibly does, work a hardship in special or individual cases, yet that in no way argues that the system is wrong or those contracting in that way are intentionally guilty of fraud.

§ 245. Voting Trust Explained.

The way a voting trust is generally accomplished is for the stockholders, or for some controlling portion of them, to place their stock in the hand of some one or more as trustees, or the stock may be transferred to the party, and in turn this party may have such stock transferred on the books of the company into his name as trustee, and the certificates will so show on their face; the authority of this last transfer will be a pooling agreement. Therein is where the idea of a pooling contract gets hold, or is associated.

The trustees then issue a certificate showing that the

holder of such certificate is entitled to share in the profits according to his interest as shown by the stock he deposited.

That upon a declaration of dividends by the trustee, or upon receipt of dividends from the trust stock, the trust certificates will receive their *pro rata* of such dividend, less the expenses of the pool or the voting trust.

The voting power of this trustee stock is in the trustee and is locked up with him during the life of the contract or voting trust.

The trust certificates themselves are assignable, and may be transferred by the original owners to whomsoever they desire.

The business can be carried on by agents entirely, and the owners will receive their dividends at the proper time or times.

It is the better plan to have the trustee transfer the deposited stock to his name as trustee, and let the certificate so show so that all those who should be disposed to deal in that stock would have notice that the stock was held in trust.

Viewing the "pool agreement" from a business standpoint, they are the offspring of the fierce struggle in "free competition," which results in injury, bankruptcy, receivers, destruction of business wherever "free competition" is carried to its logical result.

"Free competition" is a misnomer. It should be free destruction. It is a wrong principle, because its result ends in bankruptcy, or failure, or great loss in some form. It is wrong in practice because it opens the door for the strong to strangle out the weaker and promotes the doctrine of survival of the fittest, and seems to impair the doctrine of equal rights. It enables the rich to grow richer by the application of the "free competition" doctrine to conquer the entire field for themselves. It enables a strong concern to cut prices until a weaker competitor surrenders or is destroyed, in turn only to raise prices and recoup the expense of the conflict with as much more as the traffic will bear, so that those who reap the

reward of the temporary battle pay the price of the conflict many fold in the end.

Competitors of equal strength pool to save the loss of "free competition."

The principle of "free competition" is certainly wrong; it reasons into an absurdity; it results in destruction. It makes possible the very results it pretends to obviate. It compels those who engage in it, in order to survive, to form a trust in self defense. It is the father of trusts and combines, and is their most deadly weapon. It is the keenest two-edged dagger, dealing death to its weaker competitor, only in turn to shave the beneficiaries of the conflict of their profit with such other tribute as the vultures of greed see fit to lay.

The remedy, if remedy there is, must lay in the regulation of "free competition," and not in the regulation of its results. Take from the trust free competition or regulate its power under free competition, and its antlers are gone. Its means of destruction or oppression are gone.

The voting trust possess many features of conducting a corporation as a close corporation.

The following form may be sufficiently complete for practical purposes or serve as a frame work for a more extended or detail contract.

§ 246. Voting Trust Contract.

Know all men by these presents: That the parties to this contract, for the purpose of securing a prudent management of the company and avoid a speculative control thereof, and to secure the best interests of the entire stockholders and for their special benefit, and to carry out the understanding of those who have purchased the stock, or some of it, that a voting trust should be formed, have agreed as follows, to wit: That in consideration of the premises and the benefits derived from this agreement and other good and valuable considerations from and between the respective parties moving the receipt whereof is hereby acknowledged, the parties hereto stipulate; which shall not take effect, however, until a majority of the shares of the capital stock of said company shall

have signed and delivered their shares of stock or otherwise ratified this agreement as hereinafter set forth.

Witnesseth,

1. The subscribers or stockholders agree to assign and transfer on the books of the company, unto the trustees and their successors in the administration of this trust, the number of shares of stock owned or held by them in said company, set opposite their respective signatures hereto and to respectively authorize and empower the said trustees and their successors as aforesaid, as attorney in fact for said subscribers, to cause said transfer to be made on the books of said company, subject to the trusts and conditions hereinafter declared, and for this purpose to deliver to said trustees and their successors as aforesaid the certificates evidencing the said stock now owned by them respectively.

2. The said shares of stock so transferred shall be held by said trustees and their successors for the common benefit of all the parties to this agreement and all those who may become such as herein provided under the terms and conditions hereinafter set forth.

3. As soon as practicable after said transfer of stock on the books of said company shall have been made, said trustees shall execute and deliver to each of the subscribers hereto and his assigns, assignable trust certificates for the number of shares set opposite their respective names.

4. The interest in the stock to be assigned to the trustees as herein provided is assignable by transfer, upon books to be kept for that purpose by the trustees or their successors as aforesaid, by the holder of said trust certificate or certificates in person or by written power of attorney to that effect, accompanied by a surrender of said certificate or certificates; and a transferee, by accepting a new certificate in lieu of the one so surrendered, shall be deemed to have assented to the terms and conditions of this agreement.

5. A list of the shares of stock deposited with the trustees as herein provided, as well as a record of all trust certificates issued and transferred, shall be made and kept by said trustees and their successors, which shall contain the names and addresses of said certificate holders, and the number of shares held by each, which said record shall be open to the inspection of any certificate holder demanding the same.

6. The trust hereby created shall vest in the parties of the second part and their successors in office. In case any of the said trustees shall decline to accept or serve, or upon the

resignation of any of the said trustees, or whenever any of the said trustees shall part with his beneficial interest in said company, his office shall be deemed to be vacant, and the surviving or remaining trustees shall elect his successor, who shall have and exercise hereunder the same powers and duties as were intrusted to his predecessor in office; it being distinctly understood that such successor shall always hold a beneficial interest in the stock of said company. Nothing in this agreement shall be construed to prevent any one of said trustees from becoming an individual owner of trust certificates as aforesaid, or of voting for himself as an officer or director of said company.

7. Said trustees shall have power to admit to the benefits of this trust, on an equal footing with the original parties thereto, such stockholders in said company as may desire to become parties to this agreement.

8. The trust hereby created shall continue until the day of 19.., provided that the holders of a (fill in the fractional interest as desired) interest in the stock held by the trustees as herein provided may at any time terminate this trust at any meeting called for that purpose, written notice thereof having been previously mailed to each certificate holder at least ten days prior to the time fixed for such meeting. Upon the termination of said trust, the said trustees shall assign and transfer to the then holders of the trust certificates the amount of stock to which each holder thereof shall be entitled, upon the surrender of his trust certificate or certificates.

9. The subscribers hereby constitute and appoint the said parties of the second part, and their successors in office, their, and each of their, true, and lawful attorneys and proxies to appear for, represent and vote for them at all meetings of the stockholders of the said company, with power to vote upon any and all questions which may arise at any such meeting or meetings, including the sale or mortgage of the entire franchise, assets, and property of the corporation, or the dissolution of such corporation, as fully and with the same effect as the said subscribers, or any of them, if personally present, could do. And if any difference of opinion should arise among said trustees or their successors as to the proper vote to be cast, then the voice of the majority of said trustees shall govern; and it shall not be necessary for said trustees to assemble together to consider any proposition, nor for all of said trustees to attend all meetings of stockholders, but the wishes of such absent trustee or trustees shall be evidenced

by a writing signed by such absent trustee or trustees. And the said trustees and their successors are hereby authorized to designate some one of their number to actually cast the vote which all of said trustees, by reason of their being joint stockholders, shall be entitled to cast.

10. Should any question arise upon which any one of said trustees shall desire the action of the holders of the trust certificates, or upon which the owner of a majority in value of said trust certificate shall desire such action, a meeting for such purpose may be called by the trustees or majority owners desiring same as aforesaid, notice of which shall be given in writing by United States mail, addressed to each of said certificate holders at his last known place of residence, stating specifically the time, place, and object of the meeting; such notice to be mailed at least days before the time fixed for holding the meeting. At such meeting the owners of such trust certificates may be determined by a two-thirds vote in value of the certificates so held by them, the manner in which they desire the said trustees to vote; each certificate holder being entitled to one vote, either in person or by proxy, for each share of his beneficial interest in the capital stock of said company. The result of said vote shall be certified to the said trustees by the secretary of said meeting, and the said trustees shall cast their vote accordingly.

11. The legal title to all stock transferred under or by virtue of this agreement shall remain vested in the said trustees and their successors in trust, and they shall not sell, transfer or assign the same during the continuance of the trust hereby created.

12. The said trustees shall receive all dividends which may be declared from time to time upon the stock held by them as aforesaid, and shall immediately pay out the same to the holders of the trust certificates as their respective interests may from time to time appear.

13. The said trustees shall be indemnified and saved harmless from any and all expenses, costs, damages, and other liability arising out of the acceptance of this trust and the issue of the trust certificates as aforesaid, each certificate holder being liable for and agreeing to contribute his proportionate share thereof; and, whenever any funds shall come into the hands of said trustees for distribution, they may deduct therefrom a sum sufficient to indemnify them as aforesaid, and divide the balance *pro rata* among the owners of said trust certificates.

14. In case any certificate' holder shall desire to sell the beneficial interest in said company owned by him or any part thereof, he shall, before offering the same to any one else, first notify said trustees of the number of shares thereof which he desires to sell, and said trustees shall immediately notify all of the holders of trust certificates, at their last known place of address, respectively, of such contemplated sale; and if the party desiring to sell as aforesaid, shall not, within ten days after so notifying said trustees, receive an offer for said certificates satisfactory to him from one of said certificate holders, he may then, and not until then, offer said interest for sale to some one not a party to this trust agreement; provided, that such holder desiring to make sale as aforesaid shall not at any time dispose of any option of his beneficial interest to any outside person for the same or at a less price than he shall be offered therefor by some party to this agreement.

In witness whereof the undersigned stockholders as aforesaid have hereunto subscribed their names and affixed their seals, and set opposite each signature the number of shares held or owned by them, respectively, which they desire to have held in trust as aforesaid; and the said trustees, as an evidence of the acceptance of the trust hereby created, have also signed and sealed these presents.

Dated at the city of on the day of, A. D. 19. . .
 (SEAL) Shares.
 (SEAL) Shares.
 (SEAL) Shares.
 (SEAL) Shares.
 (SEAL)
 Trustee. (SEAL)
 Trustee. (SEAL)
 Trustee. (SEAL)
 Trustee.

§ 247. Common Voting Trust Certificate.

No. Shares.

This is to certify that and his assigns is entitled to ... shares, of par value of (\$....) dollars each, of the beneficial interest in the capital stock of the company, certificates for which have been issued to us, as trustees, under and in pursuance of a certain trust agreement made between certain stockholders of said company and ourselves, as trustees, dated the day of, A. D. 19...

The holder of this certificate is entitled to the beneficial right and interest provided in and by said trust agreement, including a proportionate share of all dividends declared and paid on the stock of said company held in trust as aforesaid, less his proportionate share of the expenses incident to this trust.

In witness whereof the said trustees have hereunto set their hands and affixed their seals on the day of, A. D. 19...

..... (SEAL)
 (SEAL)
 (SEAL)

§ 248. Preferred Trust Certificate.

This is to certify that, as hereinafter provided, will be entitled to receive a certificate or certificates for fully paid shares of one hundred dollars each in the first preferred capital stock of the company, and in the meantime to receive payments equal to the dividends, if any, collected by the undersigned voting trustees upon a like number of such shares standing in their names; and, until after the actual delivery of such certificates, the voting trustees shall possess, and shall be entitled to exercise, all rights of every name and nature, including the right to vote, in respect of any and all such stock; it being expressly stipulated that no voting right passes by or under this certificate, or by or under any agreement expressed or implied.

This certificate is issued under and pursuant to the terms and conditions of a certain agreement dated by and between as reorganization managers, and the undersigned voting trustees. No stock certificates shall be due or deliverable hereunder before, nor until the expiration of such further period, if any, as shall elapse before the company, for two consecutive years, shall have paid per cent per annum cash dividends on its preferred stock; but the voting trustees, in their discretion, may make earlier delivery.

This certificate is transferable only on the books of the voting trustees in by the registered holder, either in person or by attorney duly authorized, according to rules established for that purpose by the voting trustees, and on surrender hereof, and until so transferred, the voting trustees may treat the registered holder as owner hereof, for all purposes whatsoever except the delivery of stock certificates hereunder shall not be made without the surrender hereof.

This certificate is not valid unless duly signed by as agents, and also registered by the Trust Company, of as registrar in

This certificate may be exchanged, in such manner as the voting trustees may prescribe, for a similar certificate to be issued by & Co., in behalf of the voting trustees, and to be registered by the company.

In witness whereof, the said voting trustees have caused this certificate to be signed by their duly authorized agents this day of 190...

..... Voting Trustees.

By their agent hereunder

Registered in, this day of 190., Trust Company, of Registrar.

By

Ent. Transfer Clerk.

CHAPTER XXIII.

REORGANIZATION.

§ 249. Reorganization Necessity.

Many things may necessitate a reorganization of the corporation. It is one form of dissolution of a corporation, as thereby the corporate existence is extinguished and its franchise surrendered or abandoned, if that is desired.

The property owned by the old corporation passes by the proper transfer to a new corporation.

Stock are issued by the new company to the old stockholders, or the stock may be issued to the old company to pay for its property; then the old company liquidates by exchanging the stock held by it in the new company for its own stock held by its stockholders.

In either case the same result is reached: It is one method of "freezing out" or getting rid of such stockholders as are not in harmony with the policy of the corporation.

The dissolution of a corporation involves the destruction of a contract, as the Articles of Incorporation or charter is a threefold contract, as between the incorporators and the State, the State and the corporation, the incorporators and the corporation.

In other words, it requires the joint sanction of the Legislature or legislative enactment and the incorporators. It was their joint act that brought the corporation into existence, and it requires their joint action to dissolve it. They built it, and can alone tear it down.

Old vs. Co., (Mass.) 70 N. E. 1022.

Unless the sanction of the parties to the contract are obtained, the corporation can not be dissolved, nor without the sanction by legislative enactment the corporation can not be dissolved by the incorporators or by the courts at their instance.

Benedict vs. Co., 49 N. J. Eq. 2352-23 Atl. 485.

The Legislature can authorize dissolution by the stockholders without recourse to the courts, and this is the most businesslike plan.

In *Boston J. M. Co. vs. Langdon*, 24 Pick 49, it is said of dissolution of corporations:—

“Charters are in many respects compacts between government and corporators. And as the former can not deprive the latter of their franchises in violation of the compact, so the latter can not put an end to the compact without the consent of the former. It is equally obligatory on both parties. The surrender of the charter can only be made by the formal act of the corporation; and will be of no avail until accepted by the government. There must be the same agreement of the parties to dissolve, that there was to form the compact. It is the acceptance which gives efficacy to the surrender. Dissolution of a corporation it is said extinguishes all its debts. The power to dissolve itself by its own act would be a dangerous power, and one which can not be supposed to exist.”

The stockholders are the moving power to surrender the charter or Articles of Incorporation, it can not be done by any other authority except the State.

Barton vs. Association, 114 Ind. 226; 16 N. W. 486;
Jones vs. Bank, 17 Pac. Rep. (Col.) 272.

Unless so provided by statute cessation, sale nor insolvency will dissolve the corporation. However, expiration of the term of corporate life as stated in the law or charter ends the corporation, or the courts may dissolve for cause.

Mason vs. Co., 25 Fed. 882; *Davis vs. Co.*, 87 Ala. 633;
6 So. 140; *Wheeler vs. Co.*, 143 Ill. 197; 32 N. E. 420;
Miner vs. Co., 93 Mich. 97; 53 N. W. 218.

So that in the matter of reorganization the statute of the particular jurisdiction of the corporate domicile must be consulted for the method of dissolution in connection with reorganization for the reason that reorganization involves a dissolution of the old corporation in most instances in some form.

We will assume that a reorganization of the company is desired and that all are willing for the reorganization.

As reorganization is a business policy that involves or requires a disposal in some manner the assets of the corporation,

it necessarily requires an inquiry into who must take part in the proceeding.

As was said by the Supreme Court of Iowa:—

“It is the general rule, however, that neither the directors nor a majority of stockholders of a corporation have power at common law to sell or otherwise transfer all of its property while the corporation is going, prosperous concern against the dissent of any shareholder.”

Forrester vs. Co., 55 Pac. (Mont.) 229; 74 Pac. 1088; Traer vs. Co. 99 N. W. (Ia.) 290; People vs. Ballard, 32 N. E. (N. Y.) 54; B. & M. & Cote & S. M. Co. vs. M. O. P. Co., 89 Fed. 529; Metcalf vs. A. S. T. Co., 122 Fed. 115; Calif. Bank vs. Kennedy, 167 U. S. 362.

Much good authority disputes this doctrine and holds that where there is no fraud on the rights of any one and the emergencies of business demand it, then a majority of the stockholders may sell all of its assets, even in the fact of an objecting minority.

Miners Ditch Co. vs. Zellerbach, 37 Calif. 543; Martin vs. Zellerbach, 38 Calif. 300; Bartholmew vs. Co., 38 Atl. (Conn.) 45; Treadwell vs. Co., 7 Gray (Mass.) 393.

The better and more business view appears to be expressed by the Supreme Court of Iowa, in Trear vs. Co., 99 N. W. (Ia.) 29, where it is said:—

“It is a well-settled rule that a strictly private corporation has the same right to dispose of its property that an individual has, and that when insolvent or in a failing condition it may sell all thereof without the consent of all the stockholders.”

This view is limited to a strictly private corporation, and why not a corporation sell all of its property with the same right it sells any part? If it has the same right in business as that of a natural person, it becomes a mere matter of business, and the moment it is admitted it can by its officers and agents sell any portion of its property. Why does not a like right exist as to all of its assets? It might be able to sell at such a profit as would be beneficial to it to close out its entire assets. Why should it be prevented by a limited interest in doing so? If the judgment of the ruling policy requires a sale of its

assets, unless fraud should taint the sale, no reason is perceived why it can not follow the same tactics a prudent business man would in a private business.

§ 250. Sale of Corporate Franchise.

A corporation exists complete before it ever obtains any kind of property. If it did not, it never could receive property.

Martin vs. Deets, 102 Cal. 55.

The corporation is a franchise or right obtained from the State, by and through which business is prosecuted and rights maintained. It is a threefold contract; the beneficial feature, after the corporation is erected, belongs to the incorporators, who paid for its erection to the State.

It is a contract owned by the incorporators; can they sell or assign that contract? All contracts are assignable, but not negotiable; every right of contract was assignable at common law.

Bouvier Dict.

It may sell all of its assets and it does not dissolve the corporation. It remains still a corporation with all the rights it ever had.

Sullivan vs. Co., 39 Cal. 459; *Miners D. Co. vs. Zellerbach*, 37 Cal. 543.

Still, while a corporate franchise is held to be a valuable right, that it is a contract belonging to the incorporators and that all property rights are assignable, still it is held that the franchise or right of existence is not such a right as can be sold.

State vs. Co., 19 Pac. (Kan.) 349; 16 L. E. 184; *Detroit C. S. Ry. Co. vs. C. C.*, 85 N. W. (Mich.) 96; *Pierce vs. R. R.*, 21 How. 441; *Davis vs. Co.*, 87 Ala. 633; 6 So. 140.

§ 251. Steps to Dissolve.

With this brief discussion of the various rights and things clinging around the reorganization, we must descend to the necessary steps taken to dissolve.

1. The incorporators must agree among themselves to dissolve the old company and erect a new company.

2. This agreement necessarily involves a meeting of the stockholders of the old company, as the new company is not yet erected.

3. Also a meeting possibly of the directors of the old company.

4. Resolutions of the old company wherein they offer to sell their holdings.

5. Meetings by the stockholders and directors of the new company and acceptance of the offer to sell by the new company.

6. Transfers from the old to the new and payment for the property as per agreement, either in cash or other property or stock.

§ 252. Notice.

Upon authority notice to all of the stockholders must be given, in order to have their assent or presence; this also raises the question whether a stockholder can vote at such meetings by proxy.

It is held in one case at least that an ordinary proxy given for an ordinary meeting can not be used to empower the holder to vote to sell the entire assets of the company.

Smith vs. Smith, 3 Desans (S. C.) 557.

Still it would be difficult to understand why an individual could not give a proxy to another to act as his agent to sell all of the assets of a corporation, if the proxy so expressed, as a proxy is no more than a written appointment of an agent for a general or special purpose; it could not be improper where the proxy was given for the purpose of enabling the proxy-holder to vote on the sale of the entire assets, that, if the proxy was voted and the sale consummated, the giver of the proxy would be estopped or held, that the act of the agent was the act of the principal and the sale upheld.

The form of the notice should cover the time, place, and purpose of the meeting. Exceeding care should be taken to bring the knowledge of the sale of the corporate assets to the knowledge of all of the stockholders, as in such case it will

be less probable that any dissatisfaction would result and obviate a ground to set the sale aside by a dissatisfied stockholder. If it is required by the statute to be published, then in order to bind the stockholder, notice of publication must be given precisely as provided.

56 Law Rep. Annotated 184; Jones vs. R. R. Co., 67 N. H. 119; Bagley vs. Oil Co., 201 Pa. 78; People Ins. Co. vs. Wescott, 14 Gray (Mass.) 440; Mut. Fire Ins. Co. vs. Farquhar, 86 Md. 668; 39 Atl. 527.

The following form of notice is given as embodying the idea of a proper notice to stockholders in such case, to be prepared by the secretary of the old company.

§ 253. Notice Reorganization Meeting Form.

Los Angeles, Cal., Jan. 2d, A. D. 1905,
Office of "The Leap to Light Mining Co."

To Rodney Wilcox,
Kansas City, Mo.

You will please take notice that a meeting of all of the stockholders of the "Leap to Light Mining Company," and it appears by the books of the company that you are the owner of 10,000 shares, will be held at the parlors of the Hollenback Hotel, on 29th Grant Street, in the city of Los Angeles, State of California, on the first day of May, A. D. 1905, for the purpose of considering, among other things, the reorganization of the above company, and to consider the sale and transfer of its entire assets as the best interest of the company may appear.

Whereof be present if you think proper.

Yours very respectfully,

Lou Stephens, Secretary.

Notice should be served for such length of time before the meeting as will insure sufficient time as to enable the stockholder ample time to be present.

Authorities Supra.

§ 254. Reorganization Meeting.

At the assembling of the stockholders, and the formalities of reading and filing the notice and signing of waiver of notice is had, if that precaution is thought necessary, the purpose of the meeting will possibly be freely discussed and the conclu-

sion arrived at that it is necessary to reorganize, which will necessitate a sale of the assets.

It will be found convenient then to give a written expression of that conclusion upon the records of the company by a motion in writing embodying the fact or by a resolution duly spread out upon the minutes carrying authority to the proper officers to act in the premises. Such motion or resolution may be in the following form:—

§ 255. Stockholders Authorize Directors to Sell Entire Assets.

Be It Resolved by the stockholders of the “Leap to Light Mining Company,” in special meeting assembled, that it is the sense of the meeting that it is no longer profitable to continue the business of this company under its present policy.

And Whereas, It is the sense of the stockholders that its business should be wound up and brought to a close;

And Whereas, It is also the sense of the stockholders that the entire assets of this company be sold and transferred to a corporation with a larger capital stock and more financial backing. Now, therefore, be it—

Resolved and declared that the directors of this corporation be and they are hereby instructed and empowered to sell all of the assets and plant of this company, if a proper price can be obtained in their judgment to warrant, to the New Life Mining Company.

And be it further resolved that the board of directors of this company be and they are hereby instructed to order and require the President and Secretary of this company to make, execute, and deliver such paper or papers and transfers as the sale of the property of this company may require.

And be it further resolved that the board of directors are particularly instructed not to accept a price for the property of this company less than the sum of five hundred thousand dollars, to be paid for in cash or in non-assessable preferred stock of the New Life Mining Company.

And be it further resolved that should the board of directors receive cash or part cash and part stock as aforesaid, then the same shall be distributed among the stockholders of this company *pro rata* as their interest may appear.

And be it further resolved that the stockholders of this company agree to donate to the New Life Mining Company,

as a treasury fund, twenty per cent of such cash or non-assessable preferred stock from their holdings.

And be it further resolved that the board of directors be and they are hereby instructed to require the Secretary of this company to notify each and every one of the creditors of this company to render a statement to this company of the full amount of indebtedness held by them against this company, and that they are going to be paid or provided for in cash, or secured before a transfer is made of the assets of this company to the new company.

These suggestions will enable any one to see along the line of travel of a reorganization. Such other features may be put in or arrangement changed to suit the facts that may be essential in the particular reorganization.

The creditors should in all cases be provided for, as a failure to provide for them, if there is any, would no doubt entail a series of litigation or bill in equity to follow the assets into the new company and subject them to the debts.

See *Curran vs. Ark.*, 15 How. (U. S.) 304; *Mason vs. M. Co.*, 133 U. S. 33; *Russell vs. Past*, 138 U. S. 425; *Past vs. E. Co.*, 84 Fed. Rep. 371; 28 C. C. A. 431; 25 Cook, Sec. 671-673.

The resolution of the stockholders will be passed by a vote and spread out on the minutes or filed.

After this proceeding is complete and the meeting of the stockholders have adjourned, the next step in the process will be a meeting of the board of directors of the Leap to Light Mining Company.

Sufficient has already been said generally to enable the directors meeting of any character, and this one is no different in point of formality from any other; the only difference possibly is in the particular business to be transacted, and as to that, it is pointed to that the stockholders' resolution is the instructions to be followed particularly.

It is therefore in order for the board of directors to pass a resolution along the line of their instructions authorizing the president, secretary, or other executive authorized to carry

out such business to make to the new company the proposition embodied in the resolution passed by the stockholders.

§ 256. Resolution Proposition to Sell.

A short form of resolution may be in the following form:—

The stockholders of this, the Leap to Light Mining Co., having by resolution authorized and empowered the board of directors to submit to the New Life Mining Co. a proposition to sell to the last-named company all of its assets, and the said resolution is a part of the records of the Leap to Light Mining Co., and in the possession of this board of directors and to empower or instruct the proper officers to make the proposition to the New Life Mining Co. as aforesaid.

Now, therefore, in conformity therewith and pursuant thereto, the president of the Leap to Light Mining Co., together with the Counsel of this company, are hereby instructed and empowered to present a written proposal to the New Life Mining Co., in conformity with the resolution of the stockholders herewith placed in the possession of the said president and counsel, and report to this board of directors all your acts and doings in that behalf with all convenient speed.

The counsel of the company will proceed to prepare the necessary written proposal to the New Life Mining Company, in exact conformity with the board of directors' resolution, which is practically the same as the stockholders resolution; the stockholders empower the board of directors to act, and the board of directors empower the executive officers of the corporation to act, along the same line of business.

Such proposal may be as indicated in the form as follows:—

§ 257. Proposition to Sell.

To the New Life Mining Company: Pursuant to a resolution of the board of directors, acting under instructions from the stockholders of the Leap to Light Mining Company, the undersigned is instructed to submit a proposition to you for the sale of the assets of the last-named company, as follows:—

(Here insert in written form the proposition offered, with all schedules of assets, price, terms, precisely and complete, embodying the exact proposition to be made by the selling company to the purchasing company.)

Should your company see fit to accept the proposition or offer to sell embodied in the written offer here proposed, you

will please indicate the same at your earliest possible convenience to the undersigned or the counsel for the said company.

Yours respectfully,

Sampson Snyder, President.

§ 258. Meeting of Incorporators of New Company.

The new company incorporators will meet and decide whether they will accept the offer of the old company. These matters are mere formal matters, as the matter of the reorganization no doubt has all been canvassed among the members of both companies beforehand, but a record is necessary possibly to keep pace with the trend of business.

§ 259. Resolution of New Company.

Be it resolved by the New Life Mining Company that the proposition made by the Leap to Light Mining Company to sell its assets, as per the schedule and invoice therein stated, and on file with this company, to be paid for in five hundred thousand dollars' worth of par value preferred stock of the New Life Mining Company, and the twenty per cent rebate on the purchase price should the proposition be accepted, appears to be worth the amount, and it further appearing that this company can use the same in its business.

Therefore it is ordered that the board of directors of the New Life Mining Company are instructed to purchase the entire assets, if in their judgment the purchase is a good one, of the Leap to Light Mining Company, as per their offer, and issue in payment therefor the 500,000 shares of preferred stock of the New Life Mining Company, as the Leap to Light Mining Company may direct.

§ 260. Meeting of Board of Directors of New Life Mining Company.

Omitting the formalities of the board of directors, as that is assumed now to be well understood, as this board meeting is no different from any other, and the board, being instructed to act upon the proposition, will pass a resolution similar to the following:—

§ 261. Resolution Accepting Proposition.

Whereas, upon inspection of the property offered by the Leap to Light Mining Company, it appears to be worth the price asked;

Now therefore the offer of the said company is accepted, and when the proper bills of sale, deeds, and assignments are presented to the president of the New Life Mining Company and approved by counsel for the company, the deal will be closed accordingly.

Now therefore the president, together with the counsel of this company are instructed to notify the Leap to Light Mining Company that its proposition has been accepted and that they may proceed to prepare the necessary papers, transfers, etc., and submit the same to the counsel of this company, and when approved, the payments will be made by the New Life Mining Company in conformity with the original proposition.

It is further resolved that counsel of this company (or whom ever the board may designate) be and he is hereby instructed to receive the twenty per cent bonus out of purchase price as a trustee for the New Life Mining Company, and them hold until the further instructions of this board.

It is further ordered that this resolution be served on the president of the Leap to Light Mining Company, and such other notice given such company as will apprise them of the action of New Life Mining Company in the premises.

These transactions as here indicated are suggestions along the lines indicated for the action of the two companies concerning reorganization.

Whatever and however varied the matter of reorganization may be, it must proceed along the course here indicated, and the facts may be stated and business transacted accordingly.

These observations will serve to lay out a plan of suggestions to be followed or varied, enlarged or contracted, to suit those who consummate the business.

CHAPTER XXIV.

CONSOLIDATION OR AMALGAMATION OF COMPANIES.

§ 262. Process of Consolidation.

The proceedings or process of consolidating corporations are somewhat analogous to the reorganization of a corporation.

In the consolidation there must be two or more companies, while in the reorganization there is generally only one.

The consolidation will necessarily work a dissolution of the companies consolidated, or will at least strip them of their assets, which works a dissolution in some jurisdictions the same as a reorganization.

The result reached in either case is the formation of a company to take over the assets of the consolidated or reorganized companies.

The proceedings in consolidation do not destroy the rights of creditors any more than reorganization; they must be noticed and protected in order to avoid litigation in a struggle to protect their own. The new company possibly should be made a party to actions commenced before consolidation. The new company receives the property as a trust fund, which a court of equity will trace and impress.

Corporate life is not lessened to the new company by reorganization.

Maine Cent. R. R. Co. vs. Maine, 96 U. S. 499; Market St. Ry. Co. vs. Hellman, 109 Cal. 571.

New company must be substituted in litigation with old company to impress trust fund.

Ry. Co. vs. Howard, 7 Wall (U. S.) 392; Agriculture Soc. vs. Hunter, 110 Ill. 155; East Tenn. R. R. Co. vs. Evans Heisk, (Tenn.) 407.

In consolidation all parties to contracts must be consulted

and their consent obtained, else such contracts can not be transferred as a part of the company's assets.

New Jersey Midland R. R. Co. vs. Strait, 36 N. J. L. 322;
Bruffett vs. Great Western R. R. Co., 25 Ill. 353.

In another feature of consolidation, if the consolidation is affected by means of absorption of one or two companies by the third company, then it is practically a sale or a merger, and the company which takes in the others remains *in statu quo*.

The business of bringing about a merger or consolidation will be performed by the board of directors. If the statute prescribes the plan of consolidation that must be followed in the State where the consolidation shall take place, and if the statute requires a greater number than a majority of the stockholders sanction, then the statute must be fulfilled to a letter.

The stockholders must be consulted when the plans are all formulated or all preliminary proceedings have been consummated or agreed upon, and unless authority is given by statute to consolidate, then all of the stockholders must give their consent in some manner, or consolidation can not happen against the dissent of a stockholder.

Mowrey vs. Co., 4 Brissell, 78; Fed. Co.'s No. 9891;
Clearwater vs. Meredith, 1 Wall (U. S.) 25; L. & N. Y.
Co. vs. Ky. 161 U. S. 677; People vs. Co., 121 N. Y. 582;
Pierce vs. Ry. Co., 91 How. 341; Hill vs. Nisbett, 100
Ind. 341.

The State may lawfully prohibit consolidation.

L. & N. Ry. vs. Ky., Supra.

Consolidation is only one form of sale of corporate assets, and is a matter of business of the consolidated companies, and where there is no statutory inhibition may be done with the consent of the stockholders as any other business.

Toledo Ry. Co. vs. Co., 95 Fed. Rep. 497; 36 cc. A. 155;
Matter of P. P. Ry. Co., 67 N. Y. 371; Lauman vs. Ry.
Co., 30 Pa. St. 42; Racine Co. vs. Ry. Co., 49 Ill. 331.

Some courts seem to have held it necessary in order to

effect a consolidation that some sort of statutory sanction must exist.

Pierce vs. Co., 22 How. (U. S.) 441; Cole vs. Co., 30 N. E., (N. Y.) 157 Ill. 641.

Some States limit the right to consolidate to the same kind of corporations.

In Re Ry. Co., 67 N. Y. 371.

If the right of consolidation exists by statute, the majority may effect a merger against the dissent of the minority.

Sprague vs. Co., 90 Ill. 174; Spero vs. Co., 7 Ind. 369.

If a new corporation is formed, the same proceedings thereto will have to be followed as any other new corporation, and the same fees paid unless statutory reasons exist contrary.

P. vs. Co., 113 U. S. 296; Contra People vs. Co., 29 N. E. (N. Y.) 951.

Creditors can not prevent consolidation; they are interested in nothing but the satisfaction of their claims out of the assets, and must proceed in equity for that purpose, and nothing else.

N. D. Ry. vs. Company, 120 Mass. 397; People vs. Co., 92 N. Y. 105; Rock I. Ry. vs. Moffitt, 75 Ill. 524.

The state, under its police power over corporations, may impose a consolidation tax, or it may treat the corporation as a new corporation and place an organization tax upon it.

People vs. Pfister, 57 Cal. 532; 49 Ohio St. 504; 153 U. S. 436.

§ 263. Consolidation, Particulars of.

Sufficient has been said to show the character of business to be done in a consolidation, its rights under the law, and who may proceed. It now becomes necessary to descend to the actual contracts to be entered into among the respective corporations.

As in all corporate acts, the board of directors of each corporation must prepare a resolution of consolidation which must be adopted by each of the respective boards of directors.

The preamble or reasons why or the motives inducing the consolidation may, for the sake of business brevity, be omitted, yet it will not vitiate the proceedings to insert all the reasons for consolidation.

The consolidation of corporations are but corporate contracts, which may and should be made to conform to the agreement of the respective parties to the contract, as the facts or truth of the consolidation may appear.

If the consolidation results in the entire assets being transferred to a new corporation, then the consolidation must proceed along the line of a sale by each corporation to the new corporation, that must be incorporated under the laws of some State or Territory, and in such case the contract of consolidation may be and should be a separate contract from the Articles of Incorporation, yet this is not necessarily true, as the features of the new corporation will in all probability be one of the terms of the consolidation, and if so, should be expressed in the contract.

If the consolidation is made and the consolidating companies are merged into one of their number or absorbed by one of their number, then it may possibly be necessary to amend the Articles of Incorporation of the absorbing company so that its capital stock may be large enough to cover the assets it will receive from the companies it absorbs; this will depend on the character of the agreement to consolidate.

It is not to be understood that consolidation of corporations is anything else than an agreement between the corporations, and they can make any kind of agreement they wish and in any form, unless there is a method of consolidation pointed out by statute; in such case, of course, that method must be followed in so far as it points out the procedure.

The counsel of the various consolidating corporations may prepare an agreement similar in form to the following, if that expresses the plan of consolidation desired, or he may insert

or expunge any feature not in accordance with the facts of his case, to wit:—

§ 264. Resolution of Agreement to Consolidate.

This agreement witnesseth: That it is the desire of the Broad Street Ry. Co., The Lincoln Street Ry. Co., and the Pennsylvania Street Ry. Co. to consolidate their respective holdings, assets, franchises, capital stocks, and liabilities.

And Whereas, It has been considered by the various boards of directors of the said companies that such consolidation and amalgamation would be mutually beneficial to each of the said respective companies;

And Whereas, The terms of amalgamation and consolidation of the assets, liabilities, rights, and franchises, have been agreed upon among the several companies as follows, to wit:—

1. That such consolidation shall be consummated at once upon the ratification of this agreement by the stockholders or a majority thereof.

2. That this agreement shall begin with its ratification by the stockholders or a majority thereof and continue for twenty-five years thereafter, and may be continued from time to time by the assent of the required stockholders, or changed from time to time as the best interest of the consolidation may appear.

3. That the name of the new company shall be the New Broad Street Ry. Co. (or a new name entirely if desired).

4. That the entire assets, franchises, and liabilities shall be vested in the new consolidated company by the proper transfers and said consolidated company shall complete and perform all and singular the contracts of each of the respective consolidating companies generally and specially and fully as the respective consolidating companies had agreed to do.

5. That the office of the said consolidated company shall be at 300 Pennsylvania Street, Washington, D. C.

6. That the affairs of the consolidated company shall be a board of directors which shall consist of not less than thirteen members, to be elected annually from among the stockholders of the consolidated company on the second Monday of March of each and every year after the first election, which shall occur immediately after acceptance of the agreement of consolidation by the several stockholders of the consolidating company.

7. That shares may be allotted to the various stockholders by the consolidated company as their interest may appear on the books of the respective companies

8. That the capital stock of the new consolidated company shall be the amount of the aggregate amount of stock of the three consolidated companies, to wit: 3,000,000 shares, which shall be distributed to the respective companies' shareholders; 500,000 shares to the Broad St. Ry. Co. shareholders; 1,500,000 shares to the Pennsylvania St. Ry. Co. shareholders; 1,000,000 shares to the Lincoln St. Ry. Co. shareholders.

9. That bonds shall be issued to cover the entire indebtedness of the three respective railway companies, in denomination of 1,000 dollars each, at six per cent interest, to run for twenty-five years, with the option therein contained on the part of the consolidated company to refund or pay the same off at the expiration of ten years.

10. That said bonds shall be sold at not less than par; first, to the stockholders, if they want such bonds; and second, through the Wabash Trust Company, of New York; or third, such creditors of the respective companies shall have such bonds as their respective claims appear, if they so desire.

Whereas, A majority of the stockholders having given their written consent to the consolidation, and the same is now on file with the respective companies and this company; (or the stockholders in meeting assembled passed resolutions of consolidation, as the case may be;)

Resolved, That the amalgamation agreement heretofore set forth be and the same is accepted by this company and the President and Secretary are authorized and directed to carry out the terms of this agreement in the usual form and enter into such other agreements of consolidation as required by law in such cases made and provided.

Now if consolidation is going to take place in those jurisdictions where a statutory mode is provided and articles of consolidation are to be drawn in conformity therewith, the statute must be consulted and followed in each instance as far as the articles of consolidation are concerned.

In those jurisdictions where the right of consolidation has not been limited or interfered with by statutory encroachment, the consolidation is a mere contract of sale in effect of all of its property to another corporation and a receipt in payment of cash or other property, as may be agreed upon between the contracting parties.

The business view of consolidation is that when a cor-

poration is formed to do any character of business, it may sell any or all of the property in that business whenever its stockholders see fit to do so or whenever they can profit to their satisfaction. It is a right of contract protected by the Constitution of the United States.

And in so far as the transfer of the assets to another corporation, consolidation is analogous to reorganization.

If a new company is to be formed, then Articles of Incorporation must be prepared substantially according to the agreement of consolidation and the laws complied with according to the laws of the place where consolidation shall take place and the transfers made to the new company as transfers would be made in forming a corporation in any case in the first place.

If one of the consolidated companies are used to which the property is transferred, then the capital stock may be enlarged by an amendment or the name changed in the same way.

The signing of the contract of consolidation will have to be done in the same way; the corporation would sign or execute any contract as follows:—

In Witness Whereof, The respective corporations have separately executed these presents and affixed their signatures pursuant to a resolution of the board of directors and caused their seals to be affixed.

Dated this 20th day
of May, A. D. 1905.

(SEAL)

Lincoln Street Ry. Company.

By James Ramsey,

President.

Broad Street Ry. Company.

By John T. Smith,

President.

(SEAL)

Pennsylvania Street Ry. Company.

By Semore Thompson.

(SEAL)

President.

In whatever manner the consent of the stockholders is desired, whether by written consent filed or by resolution in meeting assembled or by resolution of the stockholders after consolidation, the purpose of it all is to bind the various stockholders to the consolidation, so they may not afterward

contend they were not consulted or never agreed to the merger.

Under statutory consolidations sometimes the newspaper's hand appears, and publication is required; in such case a notice in conformity with the requirements of the particular statute is all that is essential.

Otherwise no notice is necessary and none need be published.

§ 265. Form of Articles of Consolidation.

.....Company.
Company.
Company.

Know all men by these presents: That whereas these articles made and executed on the first day of May, 1905, by and between the Company, party of the first part, and Company, party of the second part, and Company, party of the third part; all of said parties being railroad corporations duly organized and existing under the laws of the State of, and having their respective principal places of business in the city of, in said State.

Witnesseth, That the said party of the first part, the, is the owner of certain street railways in the streets of, and within the corporate limits of the aforesaid city and State, more particularly described as follows: Commencing, etc., (here specify particularly the point of commencement, route, and termini of each and every line owned and operated). The total length of said railways being, as estimated, miles; and also of all rights, franchises, and privileges granted in respect of, and in connection with said railways. And the said party of the first part is also the owner of certain rights, franchises, and privileges for the construction, maintenance, and operation of street railways in the streets and within the corporate limits of said city, more particularly described as follows, to wit: Commencing, etc. (here insert a particular description of point of commencement, route, and termini of franchise granted, but not built upon or improved).

And witnesseth that said party of the second part is the owner, etc. (here describe its properties in the same form).

And witnesseth that the party of the third part: (here describe the property of the third party).

And Whereas, Said parties, and all of them, are now, and

ever since their organization and incorporation have been, railroad corporations duly and lawfully organized and existing as such under the laws of the State of relating to the formation and existence of railroad corporations.

And Whereas, The said respective parties believe that a consolidation and amalgamation of their capital stock, their debts, properties, assets, and franchises, will be mutually advantageous.

And Whereas, The respective boards of directors of said corporations, parties hereto, have agreed upon the consolidation and amalgamation of said corporations, their capital stocks, debts, properties, assets, and franchises in the following manner, to wit:—

1. That the said consolidation and amalgamation shall be made at once, and that the name and style of the consolidated and amalgamated corporation shall be “....” That it shall continue in existence for a period of from the date of these articles.

2. That the several capital stocks, debts, properties, assets, and franchises, held, owned, or possessed by each of said corporations shall be vested in said consolidated and amalgamated corporation, as fully as the same are now severally held and enjoyed by them, respectively subject, however, to all the conditions, stipulations, contracts, liens, claims, and charges thereon, and to all debts and obligations of said respective corporation; and said consolidated and amalgamated corporation shall fully complete, carry out, and perform all valid conditions, stipulations, and contracts heretofore made by, and shall pay and discharge all liens, claims, and charges heretofore created or suffered by any of said corporations on their respective properties and shall pay and discharge all valid debts and obligations of every kind, character, and description incurred or assumed by or now existing against any of said corporations.

3. That the objects, the purposes, the capital stock, the board of directors, and the principal place of business shall be as expressed in the articles of consolidation, amalgamation and incorporation hereinafter set forth.

4. That the stockholders of each of said corporations, parties hereto, shall have issued to them the number of shares of the capital stock of the consolidated and amalgamated corporation, which the board of directors of the corporations, parties hereto, have allotted to such stockholders respectively,

upon the surrender of the certificates of stock held by said stockholders in said corporations respectively.

And Whereas, The holders of more than three-fourths in value of all the capital stock of, and issued by, each of said respective boards of directors, and for the purposes expressed in the articles of consolidation, amalgamation, and incorporation following:—

Now, therefore, know all men by these presents: That the parties hereto in pursuance of the laws of the State of in such cases made and provided, do hereby consolidate and amalgamate their capital stock, debts, properties, assets, and franchises for the uses and purposes aforesaid, and do hereby vest the same in the said consolidated and amalgamated corporation Company, and in pursuance of said consolidation and amalgamation, and in order to more fully carry the same into force and effect, do hereby adopt the following articles of consolidation, amalgamation, and incorporation:—

I.

The name of said consolidation and amalgamated corporation shall be

II.

The objects and purposes of said consolidated and amalgamated corporation are as follows, to wit: (Then follow the purposes as in original articles by which a street railway corporation is formed with respective routes, covering the entire ground separately covered by all the three companies prior to consolidation.)

The total length of railroads, as estimated, is miles (giving the aggregate milage of the three companies) or thereabouts. Also along and upon other parts of the same or any other streets, alleys, highways, roads, or lands of said city.

(The third, fourth, fifth, and sixth paragraphs usually are the same as in the articles of other incorporations.)

VII.

The amount of capital stock which was actually subscribed in each of said corporations, parties hereto, at the time of their formation, and the names of the persons by whom the same were subscribed, and the number of shares subscribed by and then held by each, was as set forth in the original Articles of Incorporation of the several companies now consolidated and amalgamated and the same was, and now is, more than one thousand dollars per mile of the estimated length of the several railroads mentioned and described in the said respective Articles of Incorporation.

VIII.

That of the capital stock of each of said corporations had, at the time of their formation (where the same was required by law), been actually paid to the respective treasurers thereof, the amounts specified in their original Articles of Incorporation verified by the affidavits filed in the office of the Secretary of the State of, and the amount so paid in were in each case per cent of the subscribed capital stock.

IX.

The amount of the capital stock of the said corporations which has been subscribed and actually paid in exceeds the amount of one thousand dollars per mile of the entire length of the said railroad, as estimated and as stated and as set forth in Article II hereof.

In witness whereof, the said parties have caused these presents to be signed by its corporate name, by their respective presidents and secretaries and their corporate seals to be hereunto affixed, pursuant to resolutions of their respective boards of directors, this day of, 1905.

 Company,
	By President.
(SEAL) Secretary.
 Company,
	By President.
(SEAL) Secretary.
 Company,
	By President.
(SEAL) Secretary.

(Acknowledgments of each and all of those signing if acknowledgment is required by statute.)

This form possibly is full enough to enable counsel familiar with the facts and wants of the parties to draw any article of consolidation under any statute, each of which, of course, would have to be regarded and followed where there is one.

PART II.

CHAPTER XXV.

FORMS.

HOW TO FILL BLANKS AND CONVERT FORMS FROM PERSONS
TO CORPORATIONS AND VICE VERSA.

§ 266. Introduction to Forms.

The forms and precedents hereafter given, most of them have stood the test of juridical scrutiny and long use. There is nothing superhuman about them; they only bear the imprint of usage and custom and the gist of brief and concrete forms of common sense.

They are most of them in full form, and are all convertible into use by either corporation or individuals. The difficulty lies in just how to make the change.

It is often difficult for even lawyers to transform an ordinary blank form used by individuals into an instrument for a corporation. The author has seen corporate instruments drawn by attorneys using such language as "its heirs, executors, administrators and assigns," instead of "its successors and assigns," and also such language as " S. P. Co., of Kansas City, Mo.," instead of "S. P. Co., formed under the laws of Missouri, with its place or principal place of business at Kansas City," and such as "Palo Alto Co., of the same County and State," instead of "Palo Alto Co., formed under the laws of California, with its office, or place, or principal place of business at Los Angeles."

These suggestions, possibly only mistakes of not a very serious character serve to show lack of knowledge and skill in preparation of corporate papers.

A corporation is theoretical, not physical; it is invisible, not visible; it is intangible, not tangible; it has no residence like a natural person, except its office, but it dwells or has its domicile where the law creating it has force, or within that legal jurisdiction; it transacts business where its offices or its agents are; it does not act in and of itself, but only by and through agents who represent it and do business for it. It does not possess any of the five senses that natural persons have; it can not exercise any of the rights of suffrage; nor does it have any right of sovereignty, unless specially delegated to it by legislative enactment; yet it is held to be a person in law, a being capable of doing any and all business that a natural person can. Hence, to be able to pass this artificial person along the line a natural person travels in business and adopt it into the forms a natural person uses or to invent forms where none exist, requires no mean amount of thought and skill.

Deeming the above sufficient apology for what will be said, it follows that a corporation can not have "heirs, executors, administrators," but there are those (its stockholders or creditors) who succeed to its property rights by different routes, hence it is proper to say in the granting clause in an instrument given by a corporation or natural person to a corporation, "its successors."

It disposes of its property by sale, transfer, and assignment on the same lines of a natural person. In an instrument it is proper to say "its assigns." Hence, a paper given by a corporation or a natural person to a corporation, it is proper to say thus: "The Manhattan Bank, its successors or assigns," and, conversely, if a corporation receive property by such a transfer, like words are proper.

If an instrument is given by a corporation as one of the parties or by a corporation to a corporation, it is proper to state at once in the body of the paper, where the names of individuals and their address would occur, the name of the corporation, thus: "Manhattan Bank, a corporation duly or-

ganized, and existing under the laws of New York, with its place (or principal place of business, if it has more than one) at 200 Broad Street, New York City."

This full description is given to fix and identify the corporation, the same as John Jones of the City and County of San Francisco, State of California, is used to describe and identify John Jones as a natural person. After the full description and identification has once been given in the writing, if it becomes necessary to thereafter use the name of the corporation, no other or further need be said than to say, "The said Manhattan Bank," or any abbreviation clearly designating the party intended.

It is generally only necessary to say "the party of the first part" or "the party of the second part" or "first party" or "second party," as the case may be, just the same as such a reference would be made if a natural person were transacting the business.

The term "legal representative" is a term that can not be properly used in an instrument to a corporation as that term means ordinary "executors or administrators," or is equivalent to these words.

Black's Law Dictionary 700.

To say in a deed to a corporation, "To the use and benefit of The American Bank, its legal representatives, successors, or assigns," would be improper as incorporations have not heirs, executors, or administrators. The term "legal representative" is not a certain but vacillating term, and for that reason its use is discouraged in corporate instruments.

It may be used to designate a receiver, but that is very remote and hardly contemplated.

Parol testimony must be resorted to, to ascertain what meaning was intended. First, it may be shown to mean next of kin.

Duncan vs. Walker, 2 Dall (U. S.) 205; Greenwood vs. Holbrook, 42 Hun. 633, on appeal, 19 N. Y. 367; Halsey vs. Paterson, 37 N. J. Eq. 448 Bacons; Benefit Societies & L. Ins. 262, Woerner on Administration, p. 906.

Second, Successors and assigns.

Hammond vs. Organ Co., 92 U. S. 724; Bank vs. Trimble, 40 Ohio St. 629; Warnecke vs. Lembca, 71 Ill. 91.

Third, A receiver of an insolvent corporation.

Barbour vs. Bank, 45 Ohio St. 135 S. C.; 17 Am. Eng. Corp. Cases 134.

Hence, to be explicit "legal representatives" should not be used.

To make the change three things are to be observed:—

First, The name.

Second, Consideration and subject matter.

Third, The signature. Outside of these simply copy the form.

1. To change the name simply insert the names of the parties to the contract you are drawing instead of the parties used in the form.

2. Insert the consideration and matter about which you are contracting in the place of that used in the form.

3. The corporate signature is more difficult. The signature must be signed by some one having authority to sign the corporate name. The chief executive officer, usually the president, signs the corporate name, especially to important contracts.

The full corporate signature will be thus:—

Attest,	The Leap to Light Mining Co.,
J. Morgan Smith,	By Ralph Wick,
Secretary.	President.

In addition to the above full signature, which is sufficient upon all contracts not required to be recorded in some public office, where individuals have to sign, seal, and acknowledge before the contract is recordable, the corporate seal would have to be put on or affixed as a further signature or identity of the corporation.

If the contract would have to be acknowledged by an individual, the corporation would also have to acknowledge its contract for record, all of which will be found hereafter among the forms.

The following list of forms in so far as they pertain to corporations or individuals, each and all of which may be used interchangeably, will be found to cover possibly every piece of business that any one would require a form for reference to perform.

In drawing any contract the mere formalities are not as essential as the substance of the instrument. Courts always sacrifice form to substance where it becomes necessary that either should be overthrown.

INTRODUCTION TO CONTRACTS.

§ 267. Forms of Contracts, Multiplicity of.

The forms of contracts are as multiple as the multiplicity of business transactions, and about as much as can be done is to give a skeleton form that will be suggestive of the line upon which contracts have been made and leave any deviation or addition to be placed therein as the contracting parties may deem proper, to suit their purpose or interest. In order that a contract may be complete, six things should happen and concur. There must be: (1) A person to contract; (2) A person able to be contracted with; (3) A thing to be contracted for; (4) A lawful consideration; (5) Clear and explicit words to express the agreement, and; (6) the assent of the contracting parties.

§ 268. The Contract Should Contain:—

1. The date of the contract, which should be truly stated.
2. The names of the parties with certainty, and in addition thereto for the purpose of further distinction and certainty, the designation as parties of the first, second, third, or as many parties as there are contracting in one or more parts.
3. The subject matter, which, including the details, time, place, and the minor details to be performed.
4. The covenants on each part for their respective performance.
5. Signature, the parties must sign the contract by themselves or through their agents. If signed by an agent, it will

be signed thus: John Doe, by Richard Roe, Agent. If signed by Power of Attorney, thus: John Doe, by Richard Roe, his Attorney in fact.

§ 269. Two Kinds of Signatures to Corporate Contracts.

If signed by the Agent of a corporation, it will be either the Corporate signature or the official. If the corporate signature, thus: The United Verde Copper Co., by W. A. Clark, President.

If the official signature, it will appear thus: W. A. Clark, President.

§ 270. A Contract May Begin With Any of the Following:—

1. We agree: That, etc.
2. We hereby agree: That, etc.
3. It is hereby agreed: That, etc.
4. This agreement witnesseth: That, etc.
5. Know all men by these presents: That, etc.
6. This agreement, made this day of, between A. B. and C. D., witnesseth:
7. A. B., of county, farmer, and C. D., of county, trader, have this day of, agreed together as follows:
8. This agreement (or contract for building, etc.) (or merchandise or work, etc.) entered into this day of, by and between A. B., of, of the first part, and C. D., of, of the second part, witnesseth:
9. Articles of agreement made and concluded (or had, made, concluded, and agreed upon) this day of, between A. B., of the city of, merchant, and C. D., of the city of, manufacturer.
10. Know all men by these presents: That this agreement (or articles of agreement, or this contract, or indenture) had, made, entered into, concluded and agreed upon, this day of, A. B., witnesseth:
11. To all whom these presents may come greeting (or to all whom it may concern): Know ye that this agreement, etc., between the, a corporation, existing under the laws of the State of, of the first part, and C. D., E. F., and G. H., a company, doing business under the firm name and style of the C. D. Manufacturing Company of, of the second part, witnesseth:

§ 271. Contracts May Conclude With Any of the Following:—

1. Signed (and sealed).
2. Signed, sealed, and acknowledged.
3. Witness our hands (and seals).
4. Given under our hands (and seals).
5. In witness whereof, we hereunto set our hands, etc.
6. In witness whereof, the parties to these presents have hereunto set their hands, etc.
7. In witness whereof, we have hereunto set our hands (and affixed our seals) (at) this day of
8. In witness whereof, we have hereunto set our hands (or subscribed our names) the day and year first (or last) above written.
9. In witness whereof, A. B., the party of the first part, and C. D., the party of the second part, in their own proper persons have hereunto respectively and severally set their hands and seals, this day of (or the day and year first, or last) above written.

§ 272. Form of Attesting Witness to Contract.

Where the law requires witnesses to a contract or testimony or testatum clause, one of the following may be used:—

1. Test.
2. Attest.
3. In witness.
4. Witnesses.
5. In presence of.
6. Executed (and delivered) in presence of.
7. Signed and interchanged in presence of.
8. Signed, sealed, and delivered in presence of.
9. Signed, sealed, and acknowledged in presence of.

§ 273. Contracts by Agent or Attorney in Fact.

If A signs "A for B" this is the signature of A, and he is the contracting party, although he makes the contract at the instance of and for the benefit of B. But if he signs "B by A" then it is the contract of B, made by him through his instrument A. In the first case A is the principal; in the second, B is the principal and A his agent. The name of the principal must appear as such in the signature of the deed;

and in agreements, the words must be sufficient to bear that construction of the signature. Parol evidence may always be admitted to charge an unnamed principal, but not to discharge an actual signer.

This agreement made this of, A. D. by and between A. B., of county, in the State of, of the first part, by C. D., his attorney in fact, and E. F., of county, in the State of, of the second part, by G. H., his attorney in fact, witnesseth:

That said party of the first part, etc.

In Witness Whereof, The parties have hereunto set their hands the day and years first above written.

A. B.,

By E. F., his attorney in fact.

C. D.,

By G. H., his attorney in fact.

§ 274. Testimonium Clause, Sealed Instruments.

This clause to sealed instruments or to any instrument is the ending phrase or clause to deeds and sealed instruments.

The following form is general and is possibly sufficient for a corporation in any State:—

In Witness Whereof, Said party of the first part has caused its corporate seal to be affixed by its Secretary, and its name to be subscribed hereto by its President (or other corporate officer, as the case may be), the day and year aforesaid.

(L. S.)

(Corporate signatures.)

Attest:Sec.

A short form sufficient in some States may be as follows:—

In witness whereof, the said A. B. Company has caused these presents to be signed by its president, attested by its secretary, and its corporate seal to be hereunto affixed this 14th day of March, A. D., 1904.

Signed, sealed, and delivered
in the presence of

.....
Company.

.....

By
President.

Attest:

(Seal of Corporation)

Another form may be as follows:—

In Witness Whereof, The said A. B. Company has caused its corporate name to be hereto subscribed by its president, and duly attested corporate seal to be hereunto affixed by its secretary, all in the city of . . . , in the State of . . . , on this 14th day of March, A. D. 1904.

(Corporate Seal)

Attest Seal: Sam Small,
Secretary.

A. B. Company.
By D. C. Rollins,
President

§ 275. Special Meeting of the Stockholders.

All general or special meetings are preceded generally by a call and a notice. A call for special meetings may be made by all or some of the stockholders or by the board of directors, directed to the president or the secretary of the company as the by-laws provide. If the call is made upon the president, the president will in turn give notice to the secretary and authorize him to notify the different stockholders of the time, place, and purpose of the meeting, or the call may be made by the directors themselves, or some of the directors. In either case the result is a notice will be finally sent out to each stockholder by the secretary. The regular annual meeting of the stockholders will be provided for in the by-laws and all the stockholders will be presumed to have notice of that, still it is better to remind them by a timely notice. If the notice originates with the directors, it may be as follows:—

FORM 32, CALL FOR SPECIAL MEETING OF STOCKHOLDERS.

We, the undersigned, directors of the United Verde Copper Company, do hereby call a special meeting of the stockholders, to be held in the office of the company at Prescott, Ariz., on the 10th day of April, 1904, at 10 A. M., for the purpose of considering the proposition to sell the entire assets of the said company, and the transaction of such other business as may in connection therewith be desirable, and we hereby authorize and instruct the secretary of the company to send out notice of said special meeting in accordance with the rules of the company.

Dated,

Prescott, Ariz.,

March 1, 1904.

(Signed) Mr. A., Director.
Mr. B., Director.

Upon receipt of the above notice by the secretary and pur-

suant thereto, the secretary must notify each stockholder of the time, place, and purpose of the convening of the stockholders, and his notice to the stockholders may be in the following form:—

FORM 33, SECRETARY'S NOTICE CALLING MEETING OF
STOCKHOLDERS.

To Mr. E., of Chicago:—

You are hereby notified that a special meeting of the stockholders of the United Verde Copper Company will be held in the office of the company at Prescott, Ariz., pursuant to this notice, on the 10th day of April, 1904, at 10 o'clock A. M., for the purpose of considering and acting upon a proposition to sell the entire assets of the company and for the transaction of any and all business necessary and desirable or pertaining thereto.

(By order of the stockholders or directors, as the case may be.)

Prescott, Ariz.,
March 5, 1904.

Mr. B., Secretary.

It sometimes happens that the by-laws require not only that the stockholders have a direct notice to them, by the secretary, but that a notice be published in some newspaper published in the community, country, or city where the principal place of business is located.

§ 276. Form 34, Notice of Publication of Stockholders'
Meeting.

To the Stockholders of the United Verde Copper Co.:—

You and each of you will please take notice that a special meeting of the stockholders of the United Verde Copper Co. will be held at the office of the company at Prescott, Ariz., on the 10th day of April, 1904, at 10 o'clock A. M., to consider a proposition for the sale of the assets of the company and for the transaction of such other business in connection therewith as may come before the meeting.

(By order of the stockholders or directors.)

Mr. B., Secretary.

The above notice may be varied according to the facts as they may appear where the business is to be transacted. The notice should be signed always by the secretary and show at whose order the notice is given

§ 276a. Voting by Proxy.

It sometimes happens that the stockholders of a corporation are not able to attend or be present at a special or other meeting, and in such a case it is usual that they appear and vote by proxy. It is proper for the by-laws to provide for voting by proxy.

FORM 35, COMMON FORM OF PROXY OR POWER OF ATTORNEY.

Know All Men by These Presents: That I, J. A., do hereby constitute and appoint R. M. my attorney and agent, for me and in my name, place, and stead to vote as my proxy, at a special meeting of the stockholders of the United Verde Copper Co., to be held at the company's office in Prescott, Ariz., on the 10th day of April, 1905, called to consider the proposition of selling the assets of the company, he to vote according to the number of votes I should be entitled to cast respectively if I were personally present.

In Witness Whereof, I have signed the above proxitive.

New York, N. Y.,

Mr. J. A.

March 10, 1905.

The above form of proxy is only a direction to, or form for, those who see proper to use it. It may vary to suit the wish of the giver of the proxy. He can go to the extent to dictating how he wishes his proxies cast on any and all propositions that are to come up at the meeting, and also to limit his proxy to the meeting in the notice.

§ 277. Minutes Special Meeting Stockholders.

Assuming now that the stockholders have assembled at the time and place given in the notice as heretofore set out, and that they are all represented either in person or by proxy, the minutes of the special meeting of the stockholders may be as follows:—

FORM 36, SPECIAL MEETING OF STOCKHOLDERS—MINUTES.

Special Meeting of the United Verde Copper Co., held April 10, 1904:—

Pursuant to formal call and notice of the stockholders of the United Verde Copper Co., assembled at special meeting in the office of the company at Prescott, Ariz., on the 10th day of April, 1905, meeting was called to order by the presi-

dent, Mr. A., the secretary, Mr. B., officiating as recording officer. The entire capital stock of the company was represented at the meeting, either in person of the owner or by proxy. The stock represented by the person of the owners was as follows:—

Mr. F., 100; Mr. G., 200; Mr. H., 500; Mr. I., 1,000 shares.

The following stockholders, being the owners of the respective shares set opposite their names, were duly represented by proxy all properly filed with the secretary:—

Mr. K. by Mr. G., prox. 250; Mr. M. by Mr. J., prox. 300; Mr. N. by Mr. J., prox. 500.

On the request of the president, the secretary presented the call and notice pursuant to which the meeting was held.

These were ordered entered upon the minutes of the meeting, and are as follows: (Here copy notice given.)

STATING PURPOSE OF CALL MEETING.

The president then briefly stated the purpose of the meeting to be the consideration of the sale of the entire property of the United Verde Copper Company, including all the machinery, the real property and entire holdings of the company, mines, mills, etc. The president also stated that there had been a proposition made by a large English syndicate, of whom he had taken steps to ascertain their financial standing, and had found they were able to pay the price they were offering, in cash, and that the price stated in their offer was \$10,000,000.

The president also advised that the proposition of the English syndicate be accepted; that the possibilities were that it would take a long series of years to ever work that much money out of the mine, and by the time that amount of money could be netted, and the interest it would accumulate, the mine might "pinch out," and for that reason and because he believed the decline in copper would be certain, it would be advisable to the interests of the stockholders to sell the mine and its equipments.

An extended discussion arose at once, participated in by all the stockholders, as to the value of the property. The investment of such a large sum of money was advanced by some as one of the reasons why it should not sell; that possibly they would never be able to make another investment that would yield as great an income as the investment they already had, and the great amount of labor and difficulty it would take in placing as much money as that where it would bear a profit-

able percentage would be very difficult, at least no investment could be found that would yield as large an income even upon that much money invested, as did the United Verde Copper Mine; while others took the view that this amount of money would be amply sufficient or more money than they could ever make use of, and it was not a question of investment, but was a question whether the property, as an investment, was worth the \$100,000,000.

They being unable to agree at this time, and the meeting being unsettled as to what it would determine upon, it was moved by Mr. M. to adjourn until 10 o'clock A. M. the following day, in order to give the stockholders further time to consider whether they would accept or reject the proposition. Motion was duly seconded and carried. Meeting was declared adjourned in accordance with the motion. The minutes were signed by Mr. B., secretary, and countersigned by Mr. A., president.

§ 278. Form 37, Adjourned Meeting.

Minutes of the adjourned meeting of the stockholders of the United Verde Copper Co., April 11, 1904.

Pursuant to adjournment, a special meeting of the stockholders of the United Verde Copper Co., reassembled in the office of the company at Prescott, Ariz., the 11th day of April, 1904, at 10 o'clock, A. M. Meeting was called to order by the president, Mr. B. officiating as recorder. Stockholders were all present except those represented by proxy in the hands of the secretary. The minutes of the special meeting of the stockholders held on the preceding day, and from which the present meeting was adjourned, were read for the information of those present. After the reading of the minutes, the president announced that if there was no objection to the minutes, they would stand approved. There being no objection, the minutes were ordered approved. Whereupon a discussion of the sale of the United Verde Co., and all equipments was again entered upon by the various stockholders. After some discussion, Mr. M. offered the following resolution:—

RESOLUTION ACCEPTING PRICE OF PROPERTY.

Whereas, A certain proposition has been made to the stockholders of this company for the purchase of the United Verde Copper Co. by an English syndicate;

Whereas, \$100,000,000 has been offered for the entire properties, mines, reduction works, machinery, etc., of the said company; now therefore,

Be it resolved that the stockholders of this company hereby instruct and authorize the directors of the company to accept the \$100,000,000 in full payment for the property of the United Verde Copper Co., and to enter into such contracts as will protect the said company upon their part and to instruct the president of the United Verde Copper Co. to execute such deed or deeds and to deliver the same to the English syndicate, upon the payment by the English syndicate to the board of directors of the price offered by the said syndicate in its proposition to the stockholders of this company.

The resolution as read was seconded, and after a short discussion participated in by the various stockholders, a vote was taken, which showed that the resolution was adopted by the unanimous vote of the stockholders.

There being no further business before the meeting, it adjourned *sine die*.

Mr. A., President.

Mr. B., Secretary.

§ 279. Directors' Special Adjourned Meeting.

No notice is necessary for a special adjourned meeting, unless the special meeting was deferred to a time greatly removed from the date of adjournment, and in such case it would be always proper for the secretary to re-notice the stockholders. The directors, usually living in a close proximity, may be assembled upon a call and waiver, if it is required by the by-laws or by resolution duly spread upon the minutes that the directors meet at certain specified times, then it will possibly never be necessary for a special directors' meeting to be called, or if it should happen that it was necessary to call a special directors' meeting, it may be done in the following form:—

FORM 38, NOTICE OF MEETING—DIRECTORS.

To Mr. A.,

Prescott, Ariz.

You are hereby notified that a meeting of the directors of the Bashford Grocery Co. will be held at the office of the company in the city of Prescott, on the 1st day of June, 1904, at 3 o'clock, P. M., to consider the purchase of the fall supply of flour.

Chicago Ill.,

April 1, A. D. 1904.

Mr. B., Secretary.

Upon assembling of the directors of the special meeting, in order to keep a proper record of the meeting, the directors can sign a paper designated as a "call and waiver," which may be in the following form:—

FORM 39, CALL AND WAIVER.

We, the undersigned, being all the directors of the Bashford Grocery Co., of the city of Prescott, Ariz., hereby call a special meeting of the board of directors, the said meeting to be held at the company's office in Prescott, on the 1st day of June, 1904, at 3 o'clock P. M., to consider the purchase of the fall supply of flour for the company and to transact any other business in connection therewith, and we hereby waive all statutory and by-law requirements as to time, place, and purpose of the said meeting and consent to the transaction thereat of any and all business pertaining to the affairs of the company.

J. B. Roach, R. G. Ames, John Bashford, J. G. Burmester.

FORM 40, MINUTES OF SPECIAL DIRECTORS' MEETING.

Special meeting of the Bashford Grocery Co., held June 1, 1904.

The board of directors of the Bashford Grocery Co. assembled pursuant to call and waiver of notice of special meeting in the office of the company at Prescott, Ariz., on June 1, 1904. Meeting was called to order by the president, Mr. Bashford, with Mr. Roach acting as secretary. All the members of the board were present and participated in the meeting. The secretary presented call and waiver duly signed by all the members of the board, pursuant to which the meeting was held. There being no objection thereto, the president ordered that the call and waiver as signed be spread upon the minutes. (Here the secretary may spread out the call and waiver in accordance with the form above set forth.)

The president then stated that Mr. John Burmester, treasurer of the company for nearly twenty years last past, had unexpectedly determined to embark for himself in business in the city of San Francisco, and that would necessitate his leaving the city permanently, and that he had handed in his resignation. On request of the president, the secretary read the resignation of Mr. Burmester.

FORM 41, RESIGNATION OF TREASURER.

Prescott, Ariz., March 10, 1904.

To the Board of Directors of the Bashford Grocery Co.

Gentlemen: I have concluded to enter into business upon my own account in the city of San Francisco. This will necessitate my permanently leaving the city of Prescott. I regret very much to say that this action will compel me to resign my position as treasurer of your company, and I tender this my resignation and hope that you will act on it promptly, and appoint a committee to audit my accounts and to take over receipt for the moneys and other property of the company now mentioned in my hands.

Regretting the unavoidable termination of my very pleasant relation with the company, I remain,

Yours very truly,

J. G. Burmester.

On motion of Mr. Roach, duly seconded and carried by unanimous vote of the board, Mr. Burmester's resignation as treasurer was duly accepted and the thanks of the board were tendered to him for the efficient manner in which he had discharged the duties of his office. After some informal discussion among the directors, Mr. Roach was nominated, he being the assistant treasurer of the company, for the position of the treasurer.

The nomination was duly seconded, and there being no other nomination to the office, Mr. Roach was unanimously elected treasurer of the company.

Upon motion duly made and seconded and passed, a committee of two were appointed to make such audit of the former treasurer's accounts as seemed to them expedient, and to receipt for the moneys and property and to turn them over to Mr. Roach, his successor.

There being no further business before the meeting, it was upon motion adjourned *sine die*.

Mr. Bashford, President.

Mr. Roach, Secretary.

§ 280. Transfer or Exchange of Property for Corporation Stock.

It may possibly happen that incorporators may not just understand how to proceed in the exchange of property upon which the company is expected to operate for the company stock, so that the stock may, when issued, be fully paid for, and as is generally understood, to be thereafter non-assessable,

as that is the character of the stock now generally issued by corporations, unless statutes or it is otherwise provided.

The most common plan resorted to to pay up stock is for the owner or owners of the property in which the company is expected to operate, to make a written proposition to the corporation and file it with the company, offering to trade, sell, or exchange to the company such and such property, describing it, for the entire issue of its capital stock. The company will then act upon the proposition made, and usually the stockholders, if they accept the proposition, will order by a resolution on the minutes the board of directors to negotiate and authorize the president to enter into the contract with the owners of the property and to accept the offer and complete the papers, and when the papers are completed, then the stock may be issued upon the acceptance of the papers by the party who makes the proposition and the secretary authorized to issue the stock and deliver it to the purchaser or his order.

Again, if the stock is to be paid for in cash, the usual way is to call upon the subscribers or the intended stockholders for the cash at a stated time, that is, the stockholders will order by resolution that the directors assess the subscribers for the full amount paid in, at once or in thirty days or in such time as may be proper, or they may order a portion of it to be paid in, and this will enable the corporation to have in its treasury whatever has been subscribed or a portion thereof in cash, and the company will have exchanged for its cash its stock, either in full or in such quantities as has been subscribed.

Now having the cash on hand, if the corporation is not a banking concern, it will proceed to purchase whatever property it is going to deal in, and to that end, the stockholders will order the directors to empower the president to negotiate for certain properties they wish to buy. The president will follow directions and report back his progress to the directors, and if the negotiations are satisfactory, the stockholders will order the directors to instruct the president to complete the deal, draw his check for the money, and when the deeds or

other papers are satisfactory to the counsel of the company, deliver the check and receive the deeds or other title papers for the company. If now there is not sufficient working capital, the directors may borrow such a sum as they need to carry on the business engaged in.

Again, the corporation can get control of another corporation by the purchase of its capital stock, and in that case, the terms agreed upon would depend upon how the contract was made. The purchasing corporation may pay for the stock of the selling corporation by part cash and part stock payment, or it might pay all in the stock or all in cash, and in either case, the minutes should show just what was done and how it was done.

These transactions are usually done by written offers and by written acceptances of such offers, and in either case the secretary has little else to do than to copy these papers in the minutes and file them in the files of the company.

That it is suggested that these transactions are carried on in writing does not preclude that they be carried on verbally, except such title papers as are essential to complete the transfers of the title to the property, and in small corporations many of the formalities may be and usually are dispensed with, and nothing more shows upon the minutes than the transaction exchanging the title papers and that the business was transacted. Generally deals between parties of this kind are talked up beforehand, and the written propositions made are but a formal ending of what has already been agreed upon verbally, for the purpose of reducing the dealings to writing, and placing them upon record.

§ 281. Annual Stockholders' Meeting.

The annual stockholders' meeting is an important factor in the corporate machinery, and it is not pressing the matter too close to state that the records of this meeting should be very carefully kept, although from a legal standpoint these records might not be absolutely necessary to be reduced to writing, as in the absence of the charter or by-law requirement

resolutions of the stockholders' meetings need not be recorded in the corporation books, and should it ever become necessary to prove the action of stockholders, it may be proved by parol evidence, but it is always better to keep a strict account of these doings and business, as by any neglect of duty on the part of the company's officials, confusion may occur, hence it is always better to keep a careful record and close minute of every proceeding that is transacted at the stockholders' and directors' meetings.

FORM 42, STOCKHOLDERS' ANNUAL MEETING.

Minutes of annual meeting of the Leap to Light Mining Company, held March 1, 1905.

The stockholders of the Leap to Light Mining Co. met in annual session at one of the offices of the company in New York City, at 10 A. M., March 1, 1905. The president and secretary of the company took charge of the meeting. The president ordered call of the roll by the secretary, which roll call showed that out of 100,000 shares of stock, there were present 75,000, represented in person or by proxy, which constituted a quorum. After this the meeting was declared ready for business.

The secretary submitted a copy of the notice of the meeting with his certificate thereto attached, certifying that copies had been duly served on every stockholder of record on or before the 1st day of February, 1905, and that he had published the same in a newspaper published in the city of New York, known as the *New York Sun*, two successive publications more than ten days prior to the date of the meeting.

There was no objection made to the notice as given by the secretary, and the same was ordered received and filed.

The minutes of the preceding annual meeting were then read and approved.

The minutes of the special meetings of the stockholders, held respectively March, August, and October, 1904, were read and approved.

The annual report of the president, Mr. Mark Anthony, was read and submitted. There being no objection thereto, the same was received and filed with the secretary.

The report of the treasurer was also read. There being no objection thereto, the same was ordered received and filed by the secretary.

The report of the committee on the by-laws followed, which was also read, ordered received, and filed.

The election of directors being next in order for the coming year, the president appointed Mr. J. C. Calhoun as inspector of the election. Nominations followed, and Mr. Anthony, Mr. Booth, and Mr. Dunn were nominated to act as directors for the ensuing year. The election proceeded by ballot, and at its conclusion the inspector made his formal report, announcing and certifying to the election of the following gentlemen as directors of the company for the ensuing year:—

Mr. Mark Anthony, director; Mr. Amos Booth, director; Mr. R. B. Dunn, director.

The report of the inspector was ordered filed with the secretary by the president.

The recommendation of the committee on by-laws was then taken up for discussion. A stormy debate ensued. A number of motions were made regarding by-laws and were lost. It became apparent from the temper of the meeting that nothing could be done in that regard, whereupon Mr. Emerald moved to adjourn to March 5, 1905. Motion was carried.

Mark Anthony, President. Amos Booth, Secretary.

§ 282. Formation of a Corporation.

The formation of a corporation rests in the law of the State where the corporation is to be formed. The terms "charter," "certificate of incorporation," or "articles of incorporation," are words that may be used and are used to a great extent in general acceptance as terms interchangeable. (We consider the term "Articles of Incorporation" the better expression, and as signifying more accurately what was, or is actually meant under general incorporation laws. They do not, however, mean strictly the same, as "charter" signifies more certainly the creation of a corporation by a special act of a legislative body, while the "certificate of incorporation," or "Articles of Incorporation," are more properly a reference to the paper agreement or contract between the individuals and the State under the general corporation laws.)

There is possibly no difference in the terms respecting a charter that has heretofore been used, except that a certificate of incorporation or "Articles of Incorporation" are terms more

up-to-date than the word "charter." There seems to be a prevailing understanding at large that the word "charter" is used to designate some specific right that usually accompanies Articles of Incorporation granted by the State. This, however, is not true, as where Articles of Incorporation are taken out under general laws, the articles themselves cover every possible necessity for a right to do business, and no charter or other paper is ever granted by the States. None is necessary.

ARTICLES OF INCORPORATION.

The Articles of Incorporation, when complete, constitute a contract between the incorporators as individuals, and the State as a sovereign power. Some forms will be here given to assist those who desire to incorporate. The first form will be an approved form for the Territory of Arizona, as the law now stands.

FORM 43, ARIZONA FORM OF ARTICLES OF INCORPORATION.

ARTICLES OF INCORPORATION OF THE BARODA DIAMOND COMPANY.

Know All Men by These Presents: That we, the undersigned, have this day associated ourselves together for the purpose of forming a corporation under the laws of Arizona, and for that purpose do adopt the following charter:—

ARTICLE I.

The name of this corporation shall be Baroda Diamond Company of Des Moines, Iowa.

ARTICLE II.

This company shall keep an office at Phoenix, Arizona, and may keep other principal offices and places of business at Des Moines, State of Iowa, and at such other places as the board of directors may establish at which place or places all incorporators', stockholders', and directors' meetings may be held, and all corporate business may be transacted.

ARTICLE III.

The amount of the capital stock of this corporation shall be 100,000 dollars, divided into 10,000 shares of the par value of \$10 each, and said capital stock shall be paid up at the date of the issuance or at such time as the board of di-

rectors may designate, in money, property, labor, or any other valuable right or thing, and the judgment of the board of directors or managing officers as to the value thereof shall be conclusive.

ARTICLE IV.

The general nature of the business in which this corporation shall engage is as follows, to wit: The manufacture and sale of Baroda Diamonds, and also (whatever the character of business the company desires to engage in may be inserted here) engaging in any and all kinds of business that a natural person might or could in the United States or any part of the world.

ARTICLE V.

The affairs of this corporation shall be conducted by a board of directors, who shall be elected on the 10th day of January of each year as the by-laws shall provide.

ARTICLE VI.

The highest amount of liability that this corporation shall subject itself to at any one time shall not exceed 25,000 dollars.

ARTICLE VII.

This corporation is formed to endure for twenty-five years after its articles are duly executed, but its charter rights may be renewed (before the charter expires), from time to time, for periods not exceeding twenty-five years at a time perpetually.

ARTICLE VIII.

The private property of the stockholders of this corporation shall be and is hereby made forever exempt from all liability for its debts or obligations.

ARTICLE IX.

The capital stock of this corporation shall be and is hereby made forever non-assessable by this corporation for any purpose.

In Witness Whereof, We have hereunto set our hands and seals, this 5th day of March, 1904.

Sampson Pepper, (SEAL).

Frank Wood, (SEAL).

Theodore Perry, (SEAL).

(For form of acknowledgment see title acknowledgments, form of.)

FORM 44, NEW JERSEY'S FORM OF INCORPORATION.

In New Jersey the Articles of Incorporation are called a "certificate of incorporation." The following is a form that may be used under New Jersey law.

CERTIFICATE OF INCORPORATION OF THE COLORADO CATTLE CO.

This is to certify that we do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled, "An Act Concerning Corporation," and several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

First, The name of the corporation is Colorado Cattle Company.

Second, The location of the principal office in this State is at No. 200 Lew Street, in the city of Trenton, county of Trenton, N. J. The name of the agent therein and in charge thereof upon whom process of this corporation may be served, is Ren Lenard.

Third, The objects for which this corporation is formed are (Here state the specific objects in which the corporation is to engage, and if it is desirable, or the parties think the corporation is liable to desire to expand, then some general clause may be added as the foundation for such expansion). The corporation shall also have power to conduct its business, in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage, and convey real and personal property in any State, Territory, or colony of the United States and in any foreign country or place.

Fourth, The total authorized capital stock of this corporation is \$50,000, divided into 10,000 shares, of the par value of \$5.00 each. (Should the company desire to issue preferred stock and common stock, the following clause may be inserted:—)

(From time to time the preferred stock and common stock shall be issued in such amounts and proportions as shall be determined by the board of directors and as may be permitted by law.)

(The preferred stock shall be entitled out of any and all surplus net profits whenever declared by the board of directors, to non-cumulative dividends at the rate of, or not exceeding eight per cent per annum for the fiscal year, beginning

on the first day of January, and for each and every fiscal year thereafter, payable in preference and priority to any payment of any dividend on the net stock for such fiscal year. In addition thereto, in the event of the dissolution of the corporation, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares out of the surplus funds of the corporation before anything shall be paid therefrom to the holders of the common stock. The common stock shall be subject to the prior rights of the holders of the preferred stock as herein declared.)

(If after providing for the payment of full dividends for any fiscal year on the preferred stock, there shall remain any surplus net profits of such year, any and all such surplus net profits of such year and of any other fiscal year from which full dividends shall have been paid on the preferred stock shall be applicable to dividends upon the common stock, when, and as from time to time the same shall be declared by the board of directors, and out of any such surplus net profits upon the common stock of the corporation for such fiscal year, but not until after the dividends upon the preferred stock for such fiscal year shall have been actually paid or provided for and set apart.)

Fifth, The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of which, \$50,000 is the amount of capital stock with which this company will commence business, are as follows:—

Name.	Post-office Address.	Number of Shares.
John Gorman,	New York City, N. Y.	25,000
Eli Seely,	Denver, Colo.	25,000

Sixth, The period of the existence of this corporation is twenty-five years. (There is no limit to the operation of a corporation, and it may be stated at any time or length of time, or to be perpetual.)

Seventh, The corporation may use and apply its surplus earnings and accumulated profits authorized by law to be reserved to the purchase or acquisition of property, etc. The corporation in its by-laws may prescribe the number necessary to constitute a quorum of the board of directors, which number may be less than the majority of the whole number. The number of directors at any time may be increased by a vote of the board of directors. The board of directors shall have power, without the assent of the board of stockholders, to make, alter, amend, and rescind the by-laws, fix the amount

to be reserved as working capital, and authorize and cause to be executed mortgages, etc. (adding such provisions as may be desired.)

In Witness Whereof, We have hereunto set our hands and seals the 1st day of January, A. D. 1904.

Signed, Sealed and De- (Signature and Seals.)
livered in the presence of,

ACKNOWLEDGMENT.

State of New Jersey }
County..... } ss.

Be it remembered that on this day of, 190....., before me,....., personally appeared.... .., who I am satisfied are the persons named in and who executed the foregoing certificate, and I, having first made known to them the contents thereof, they each acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed.

(Signature and title of the officer.)

§ 283. By-law.

By-laws of a corporation are the rules or laws made by the corporation for the government of the stockholders, directors, and all other officers and agents of the company.

Short form of by-laws under the laws of New York:—

FORM 45, BY-LAWS CEDAR FALLS COAL COMPANY

Stock.

ARTICLE I.

1. Certificate of stock shall be issued in numerical order from the stock certificate book, be signed by the president and treasurer, and sealed by the secretary with the corporate seal. A record of each certificate issued shall be kept on the stub thereof.

2. Transfers of stock shall be made only upon the books of the company and before a new certificate is issued; the old certificate must be surrendered for cancellation. The stock-books of the company shall be closed for transfers twenty days before general elections and ten days before dividend days.

3. The treasury stock of the company shall consist of such issued and outstanding stock of the company as may be donated to the company or otherwise acquired, and shall be held

subject to disposal by the board of directors. Such stock shall neither vote nor participate in dividends while held by the company.

Stockholders.

ARTICLE II.

1. The annual meeting of the stockholders of this company shall be held in the principal office of the company in New York City, on the second Monday in January of each year, at 12 M.

2. Special meetings of the stockholders may be called at the principal office of the company at any time by resolution of the board of directors, or upon written request of stockholders holding one third of the outstanding stock.

3. Notice of meetings, written or printed, for every regular or special meeting of the stockholders, shall be prepared and mailed to the last-known post-office address of each stockholder not less than ten days before any such meeting, and if for a special meeting, such notice shall state the object or objects thereof.

4. A quorum at any meeting of the stockholders shall consist of a majority of the voting stock of the company, represented in person or by proxy. A majority of such quorum shall decide any question that may come before the meeting.

5. The election of directors shall be held at the annual meeting of stockholders, and shall, after the first election, be conducted by two inspectors of election, appointed by president for that purpose. The election shall be by ballot, and each stockholder of record shall be entitled to cast one vote for each share of stock held by him.

6. The order of business at the annual meeting, and as far as possible, at all other meetings of the stockholders, shall be: (1) calling of roll; (2) proof of due notice of meeting; (3) reading and disposal of any unapproved minutes; (4) annual reports of officers and committees; (5) election of directors; (6) unfinished business; (7) new business; (8) adjournment.

Directors.

ARTICLE III.

1. The business and property of the company shall be managed by a board of seven directors, who shall be stockholders and who shall be elected annually by ballot by the stockholders for term of one year, and shall serve until election and acceptance of their duly qualified successors. Any vacancies

may be filled by the board for the unexpired term. Directors shall receive no compensation for their services.

2. The regular meeting of the board of directors shall be held in the principal office of the company in New York City, on the third Tuesday of each month, at 3 P. M.

3. Special meetings of the board of directors to be held in the principal office of the company in New York City may be called at any time by the president, or by any three members of the board or may be held at any time and place, without notice, by unanimous written consent of all members at such meeting.

4. Notices of both regular and special meetings shall be mailed by the secretary to each member of the board not less than five days before any such meeting, and notices of special meetings shall state the purpose thereof.

5. A quorum at any meeting shall consist of a majority of the entire membership of the board. A majority of such quorum shall decide any question that may come before the meeting.

6. Officers of the company shall be elected by ballot by the board of directors at their first meeting after the election of directors each year. If any office becomes vacant during the year, the board of directors shall fill the same for the unexpired term. The board of directors shall fix the compensation of the officers and agents of the company.

7. The order of business at any regular or special meeting of the board of directors shall be: (1) reading and disposal of any unapproved minutes; (2) reports of officers and committees; (3) unfinished business; (4) new business; (5) adjournment.

Officers.

ARTICLE IV.

1. The officers of the company shall be a president, a vice-president, a secretary and a treasurer, who shall be elected for one year and shall hold office until their successors are elected and qualify. The positions of secretary and treasurer may be held by one person.

2. The president shall preside at all meetings, shall have general supervision of the affairs of the company, shall sign or countersign all certificates, contracts, and other instruments of the company as authorized by the board of directors, shall make reports to the directors and stockholders and perform all such other duties as are incident to his office or are properly required of him by the board of directors. In the

absence or disability of the president, the vice-president shall exercise all his functions.

3. The secretary shall issue notices for all meetings, shall keep their minutes, shall have charge of the seal and the corporate books, shall sign with the president with such instruments as require such signature, and shall make such reports and perform such other duties as are incident to his office, or are properly required of him by the board of directors.

4. The treasurer shall have the custody of all moneys and securities of the company, and shall keep regular books of account, and balance the same each month. He shall sign or countersign such instruments as require his signature, shall perform all duties incident to his office or that are properly required of him by the board, and shall give bond for the faithful performance of his duties in such sum with such sureties as may be required by the board of directors.

Dividends and Finance.

ARTICLE V.

1. Dividends shall be declared only from the surplus profits at such times as the board of directors shall direct, and no dividend shall be declared that will impair the capital of the company.

2. The moneys of the company shall be deposited in the name of the company in such bank or trust company as the board of directors shall designate, and shall be drawn out only by check signed by the treasurer, and countersigned by the president.

Seal.

ARTICLE VI.

1. The corporate seal of the company shall consist of two concentric circles, between which is the name of the company, and in the center shall be inscribed, "Incorporated 1903, New York," and such seal, as impressed on the margin hereof, is hereby adopted as the corporate seal of the company.

Amendments.

ARTICLE VII.

1. These by-laws may be amended, repealed, or altered, in whole or in part, by a majority vote of the entire outstanding stock of the company, at any regular meeting of the stockholders, or at any special meeting where such action has been announced in the call and notice of such meeting.

2. The board of directors may adopt additional by-laws in harmony therewith, but shall not alter nor repeal any by-laws adopted by the stockholders of the company.

FORM 46, CERTIFICATE TO BY-LAWS.

I hereby certify that the foregoing are the by-laws of the Cedar Falls Coal Company, adopted by the stockholders thereof duly assembled in their first meeting on the 9th day of March, 1903, at the office of the company, No. 170 Broadway, New York City.

In testimony whereof, I have hereunto affixed my official signature and the corporate seal of said corporation on this 10th day of March, 1903.

(Corporate Seal)

Charles E. Goff,
Secretary.

FORM 47, ARIZONA FORM OF BY-LAWS.

The following general form of by-laws has been in general use and may be arranged to meet any requirement desired. The idea of incorporating in the by-laws statutory and charter matter is discouraged, as confusion will certainly follow. The charter will ever be at hand, and should a matter arise about which there is any doubt, the statute or a competent attorney should be counseled.

Name, Location, and Offices.**ARTICLE I.**

The name of this corporation is the Company.

The company shall have a main office in the city of and offices in such other places as the board of directors may determine, at which place or places all incorporators', stockholders', and directors' meetings may be held, and all corporate business may be transacted.

Seal.**ARTICLE II.**

The company shall have a circular seal containing the name of the company, the year of its creation, and such other matter as the organizers or stockholders may determine.

Stockholders' Meeting.**ARTICLE III.**

Stockholders may vote at all meetings either in person or by proxy appointed by instrument in writing subscribed by the stockholder or his duly authorized attorney, and granted not more than thirty days before the meeting, which shall be named therein. Before any such written proxy is voted upon it shall be filed with the secretary. Each stockholder is entitled to one vote for each share of stock standing in his name on the books of the company at the time of the meeting. Shares hypothecated to the company shall not be represented.

Stockholders holding a majority in amount of the stock issued and outstanding (represented in person or by proxy), shall be necessary and sufficient to constitute a quorum for the transaction of business. If less than a quorum be present, the meeting may be adjourned from time to time by a majority in interest of the stockholders present, for a period not exceeding one month at any time, without any notice other than an announcement at the meeting until a quorum be present. Any meeting at which a quorum is present may also be adjourned in a like manner, by a majority in interest of the stockholders present, for such time, or upon such call, as is determined by vote. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

The annual meeting of the stockholders, after the year 190., shall be held on the day of in each year, at o'clock, M., and the secretary shall give notice thereof, without being specially requested so to do. At such meeting the company may elect directors and other officers, and transact any other business coming before the meeting.

Special meetings of the stockholders shall be called by the secretary at the written request of the president, or two directors, or of stockholders of record owning a third of the stock issued and outstanding.

All stockholders' meetings, whether annual or special, shall be called by the secretary by mailing a printed or written notice thereof, stating the day, hour, and place of the meeting; and, in case of special meetings, the general nature of the business to be transacted, to each stockholder of record at his last known post-office address, postage prepaid, at least five days, exclusive of the day of mailing, before the date of the meeting. Or, such meeting may be called by the secretary by publishing notice thereof, stating the day, hour, and place of the meeting; and, in case of special meetings, the general nature of the business to be transacted, for days in succession, the last publication to be at least days before the date of meeting, and notice given in either of the foregoing modes shall be valid. A failure to give the notice for the regular annual meeting shall not invalidate the proceedings of the meeting.

If all the stockholders in writing waive notice of a special meeting, no notice of such meeting shall be required. All meetings of stockholders at which all are present, in person

or by proxy, and sign a written consent thereto, on the record thereof, are legal and valid for all purposes, whether or not previous notice has been given, and at such meeting any corporate action may be taken.

Directors' Meeting.

ARTICLE IV.

The newly elected board of directors may hold its first meeting for the purpose of organization and transaction of business without notice, at such time and place as shall be fixed at the annual meeting by vote of the stockholders; or the time and place of the first meeting may be fixed by the consent in writing of the directors.

At such meeting the board shall elect a president and a vice-president, from among their own number, and a secretary who need not be a member of the board. This section shall not apply to the original meeting of the incorporators for the organization of this company at which all the corporate officers named in Article V may be elected by the incorporators.

Regular meetings of the board shall be held without notice on the, at the office of the company, in the city of, at o'clock, M., by order of the board, elsewhere, on a day and at an hour and place to be fixed by the board.

A majority of the whole board shall be necessary and sufficient to constitute a quorum for the transaction of business, but a less number may adjourn a meeting from time to time until a quorum be present.

Meetings of the board may be called by the president, or any two directors on one day's notice to each director, either personally or by letter or telegram.

All directors' meetings at which all are present and sign a written consent thereto, on the records thereof, are legal whether or not previous notice has been given.

The directors may hold their meetings and have one or more offices, and keep the books of the company outside of Arizona, at the office of the company, in the city of, and at such other places as they may from time to time determine.

Officers of the Company.

ARTICLE V.

The officers of this company shall be a president, vice-president, board of directors, secretary, treasurer,

The directors shall not be less than nor more than in number. One person may hold more than one office. All officers (except the president, vice-president, and secretary), shall be elected annually by a plurality vote of the

stockholders at the regular annual meeting. They shall continue in office until their successors are elected and qualified. In case the election of officers should not occur on the day of the annual meeting, such officers may be chosen at any subsequent meeting of the stockholders called for the purpose.

President.

ARTICLE VI.

The president shall be elected annually, by the board of directors, as provided in Article IV of the by-laws, and subject to the control and direction of the board of directors, he shall be the chief executive officer of the company. He shall preside at all meetings of the stockholders and directors; shall have general superintendence and direction of all the other officers of the company, and shall see that all orders and resolutions of the board are carried into effect. He shall execute all deeds, mortgages, bonds, and other documents authorized by the board requiring a seal, under the seal of the company; shall keep said seal in safe custody, and when authorized by the stockholders or the board, affix it to any instrument requiring the same, and the seal when so affixed, shall be attested by the secretary or treasurer. He shall be custodian of all bonds given to the company by its officers and agents.

He shall from time to time, and whenever requested, report to the board all matters within his knowledge, which the interests of the company may require to be brought to their notice, perform such other duties as may be required of him by law, these by-laws and by the board, and, in general, have all the powers and duties of supervision and management usually vested in the office of a president of a corporation.

Vice-President.

ARTICLE VII.

The vice-president shall be elected annually by the board of directors, as provided in Article IV of these by-laws, and shall be vested with all the powers and shall perform all the duties of the president in the absence of the latter from his office.

Board of Directors.

ARTICLE VIII.

The immediate government and direction of the affairs of this company shall be vested in a board of directors, elected annually as provided in Article V. The directors shall be and remain stockholders. In addition to the powers and authorities expressly conferred upon them, all the powers of the com-

pany, except as otherwise provided by law, or these by-laws, are vested in the board of directors.

Without prejudice to the general powers conferred by the last preceding clause, and other powers conferred by these by-laws, the board shall have the following powers, namely:—

1. From time to time to make and change rules and regulations, not inconsistent with law or these by-laws, for the management of the company's business and affairs.

2. To lease, purchase, or otherwise acquire in any lawful manner for and in the name of the company, any and all real estate and other property, rights and privileges whatsoever deemed necessary or convenient for the prosecution of its business, at such price or consideration and generally on such terms and conditions as they think fit, and at their discretion to pay therefor, either wholly or partly in money, stocks, bonds, debentures, or other securities of the company.

3. To sell or dispose of any real or personal estate, property, rights or privileges belonging to the company, whenever in their opinion its interests would thereby be promoted; and with the consent in writing, and pursuant to the vote of the holders of a majority of the stock issued and outstanding, to sell, assign, transfer, or otherwise dispose of the whole property of the company.

4. To create, issue, and make mortgages, bonds, deeds of trust, trust agreements and negotiable or transferable instruments and securities, secured by mortgage or otherwise, and to do every other act and thing necessary to effectuate the same.

5. To appoint at their discretion, remove or suspend such subordinate officers, agents, or servants, permanently or temporarily, as they think fit, and to determine their salaries or emoluments, and to require security in such instances and in such amounts as they think fit.

6. To confer by resolution upon any appointed officer of the company the power to choose, remove, or suspend such subordinate officers, agents, or servants.

7. To appoint any person or corporation to accept and hold in trust for the company, any property belonging to the company, or in which it is interested, or for any other purpose, and to execute and do all such deeds and things as may be requisite in relation to such trust.

8. To determine who shall be authorized on the company's behalf to sign bills, notes, receipts, acceptances, indorsements, checks, releases, contracts, and documents.

9. To delegate any of the powers of the board in the course of the current business of the company to any standing or special committee, or to any officer or agent, and to appoint any persons to be agents of the company, with such powers (including the power to sub-delegate) and upon such terms as they see fit.

Compensation of Directors.

ARTICLE IX.

Such directors, as such, shall not receive any stated salary for their services, but by resolution of the board, a fixed sum, and expense of attendance, if any, may be allowed for attendance at each regular or special meeting of the board, provided that nothing herein contained shall be construed to preclude any director from serving the company in any other capacity and receiving compensation therefor.

Secretary.

ARTICLE X.

The secretary shall be elected annually by the board of directors, as provided in Article IV of these by-laws. He shall give, or cause to be given, notice of all meetings of the stockholders, and of the board of directors, and all other notices required by law or these by-laws, and in case of his absence or refusal or neglect to do so, then such notice may be served by any person thereunto directed by the president or vice-president. He shall keep true records of all meetings of the board, and perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. He may be sworn to the faithful discharge of his duties.

Treasurer.

ARTICLE XI.

The treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the company, and shall deposit all moneys and other valuable effects in its name and to its credit in such depositories as may be designated by the board of directors.

He shall disburse the funds of the company as may be ordered by the board, taking proper vouchers therefor, and shall render to the president and directors, at the regular meetings of the board, or whenever they may require it, an account of all his transactions as treasurer, and of the financial condition of the company. He shall sign all checks, drafts, or orders for the payment of money.

He shall give the company a bond, if required by the board

of directors, in a sum, and with sureties satisfactory to the board for the faithful discharge of the duties of his office, and for the restoration to the company, in case of death, resignation, or removal from office, of all its books, papers, vouchers, money or other property of whatever kind in his possession.

Resignation.

ARTICLE XII.

Any director or other officer may resign at any time. Such resignations shall be made in writing, and shall take effect at the time specified therein. If no time is specified, it shall take effect from the time of its receipt by the secretary. The acceptance of a resignation shall not be necessary to make it effective. The secretary shall record such resignation, noting the day, hour, and minute of its reception.

The secretary may resign at any time, by filing his resignation with the board of directors or president, said resignation to take effect from and after the time of its receipt by such officers.

Filling of Vacancies.

ARTICLE XIII.

If the office of one or more directors or other officers of the company become vacant, by reason of death, resignation, disqualification, or otherwise, the remaining director or directors, although less than a quorum, may by a majority vote choose or appoint a successor or successors, who shall hold office for the unexpired term.

Duties of Officers May be Delegated.

ARTICLE XIV.

In case of the absence of any officer of the company, or for any reason that the board may deem sufficient, the board may delegate the powers or duties of such officer to any other officer, or to any director, for the time being, provided a majority of the entire board concur therein.

Issue and Transfer of Stock.

ARTICLE XV.

The president shall cause to be issued to each stockholder one or more certificates representing the number of shares owned by him in the company, signed by the president, and attested by the secretary and bearing the corporate seal. Neither the president nor secretary shall sign blanks and leave them for use by the other, nor sign them without a knowledge of the apparent title of the person to whom they are issued. In case of the absence or disability of either of the

said officers, the signatures of majority of the directors in his stead are sufficient.

The stock of this company is transferable only upon its books, by the holders of the shares in person, or by their legal representatives, and upon such transfer the old certificates shall be surrendered to the company, by delivery thereof to the person in charge of the stock and transfer books and ledgers, or such other person as the board of directors may designate, by whom they shall be cancelled, and new certificate shall thereupon be issued. A record shall be made of such transfer and issue.

The company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not it shall have express or other notice thereof.

Loss of Certificate.

ARTICLE XVI.

Any person claiming a certificate of stock to be lost or destroyed, shall have an affidavit or affirmation of that fact, and advertise the same in such a manner as the board may require, and shall give the company a bond of indemnity, in form, and with one or more sureties satisfactory to the board, in at least double the par value of such certificate, whereupon the president and treasurer may issue a certificate of the same tenor with the one alleged to be destroyed or lost, but always subject to the approval of the board.

Stock Non-Assessable.

ARTICLE XVII.

The stock of the company shall be forever non-assessable. This by-law shall not be altered or repealed, and shall form a condition upon which all the stock of the company shall be issued.

Dividends.

ARTICLE XVIII.

The board of directors shall declare dividends out of the surplus profits whenever they deem it expedient.

Statement of Condition.

ARTICLE XIX.

The board of directors shall present when called for, by the stockholders, a full and clear statement of the business and condition of the company.

Notice.**ARTICLE XX.**

Whenever notice is required by statute, or by these by-laws to be given to the stockholders, or to the directors, or to any officer of the company, personal notice is not meant unless expressly so stated, and any notice so required (other than by publication) shall be deemed to be sufficient, if given by depositing the same in a post-office box in a special post-paid wrapper, addressed to such stockholder, director or officer, and such notice shall be deemed to have been given at the time the same is mailed, except when notice is given by wire, when such notice shall be deemed to have been given at the time the same is delivered to the telegraph company.

Waiver of Notice.**ARTICLE XXI.**

Any stockholder, officer or director, may at any time waive any notice required to be given under these by-laws.

Amendments.**ARTICLE XXII.**

The stockholders, by an affirmative vote of a majority of the stock issued and outstanding, may at any regular, or upon notice at any special meeting, alter or amend these by-laws in any manner not contrary to law.

In Witness Whereof the foregoing by-laws are hereby adopted, by the incorporators and stockholders as the by-laws of the.....this the....day of....A. D., 190..

(Signed)

.....(SEAL)

.....(SEAL)

Note.—Any article of the foregoing by-laws, or any portion thereof, may be enlarged, modified, substituted or discarded altogether without affecting the remainder.

§ 284. Bonds, Corporate.

Bonds have no particular form. However to be negotiable, they must contain the same essential features of negotiability as any or all other negotiable paper. In order that any instrument be negotiable, it must contain the following essentials of negotiability:—

1. It must be in writing.
2. It must contain an unconditional promise or order to pay.

3. It must be payable in money only. Bonds may provide for convertibility into stock.

4. Must be certain in amount.

5. Must be payable to a specified person.

6. Must be payable at a time certain.

7. Must contain words, "to order or to bearer," or language equivalent thereto.

8. Must be delivered.

Negotiability entitles the holder of an instrument:—

1. To its face value without reduction.

2. No rights or equities existing between previous holders can affect the holders' rights.

NON-NEGOTIABLE CONTRACTS.

Non-negotiable contracts pass with all equities following them in whomsoever hands they may come.

Corporate stock have some of the elements of negotiability, and are generally held to be negotiable where it can be seen from its face, that was its purpose.

If a paper lack any one of the above stated essentials, it will fail to be negotiable paper, and falls back into the class of non-negotiable instruments which are instruments that pass simply by assignment or are assignable instruments. Bonds secured by mortgage may be authorized by the board of directors without any authority from the stockholders, unless limited by statutory enactment. In case of statutory restrictions upon the board of directors, then and then only is it necessary to have authority from the stockholders to mortgage and bond the corporate property.

FORM 43, FORM OF COUPON.

\$10.00

\$10.00

On the first day of....., 1...., the Commercial Cable Company will pay the bearer at the office of the Farmers' Loan and Trust Company, Ten Dollars in gold coin, being three months' interest due on its first mortgage bond for one thousand dollars.

.....Treasurer.

Bonds are to bear the following certificate endorsed upon them, to be signed by said trustee:—

FORM 49, TRUSTEE'S CERTIFICATE.

The Farmers' Loan and Trust Company, Trustee, hereby certifies that this bond is one of the issue referred to within.

The Farmers' Loan and Trust Co.

By.....
Trustee.

.....
Vice-President.

FORM 50, FORM OF REGISTERED BOND.

United States of America.

No.

The Commercial Cable Company, New York.

First Mortgage four per cent. Gold Bond.

Principal due January 1, 2404.

Interest payable quarterly, on the first days of January, April, July, and October, at the rate of four per cent per annum.

For value received, The Commercial Cable Company promises to pay to.....or assigns,dollars in gold coin of the United States of America of or equal to the present standard of weight and fineness at the office of the Commercial Cable Company, in the City of New York, on the first day of January, A. D., two thousand four hundred and four, and to pay interest thereon, in like gold coin, at the rate of four per centum per annum, from the first day of, 190.. .., until such principal sum shall be paid, such interest being payable at said office on the first days of January, April, July, and October, in each year.

This bond is one of an issue of bonds, coupon and registered, of like tenor, to an amount not exceeding in the aggregate twenty million dollars, all of which are equally secured by a mortgage deed of trust, bearing date January 1, 1904, made by the said Commercial Cable Company to said The Farmers' Loan and Trust Company, as Trustee, of and upon the property and franchises of the Commercial Cable Company, (including the franchises, stock and property of the Postal Telegraph Cable Co., heretofore acquired by said The Commercial Cable Company.

In case of default for six months after due demand in the payment of interest on any of said bonds, the principal of all thereof may be declared due in the manner and with the effect provided in said mortgage deed of trust. All payments

upon this bond of both principal and interest are to be made without deduction for any tax or taxes which said Cable Company may be required to pay or retain therefrom, by any present or future laws of the United States of America, or any of the States thereof said Cable Company hereby covenanting and agreeing to pay any and all such tax or taxes.

This bond is transferable only at the office of said The Commercial Cable Company on the books of said The Commercial Cable Company by the registered owner in person or by attorney upon the surrender hereof, and may be transferred into similar bonds of smaller denominations or be merged with other bonds of this issue into a similar bond of larger denomination except that the only denomination shall be \$100, \$500, \$1,000, \$5,000, and \$10,000.

Installments of interest on this bond shall be paid by check or warrants mailed to the proprietors at their addresses registered in the books of said Cable Company, and such payments shall be in full in the order of their maturity and in accordance with the provisions of said mortgage deed of trust.

This bond may be exchanged for the Debenture Stock of said The Commercial Cable Company on the terms set forth in the mortgage deed of trust securing this bond.

This bond shall not be valid or obligatory until the certificate endorsed hereon shall have been signed by the Trustee under the said mortgage deed of trust.

In Witness Whereof, The Commercial Cable Company has on this day of caused its corporate seal to be affixed hereto and this bond to be signed by its Vice-President and Treasurer.

The Commercial Cable Company.

By
Vice-President.

Attest:, ,
Secretary. Treasurer.

The above class of bonds usually contain a registration clause, as follows:—

FORM 51, "REGISTRATION TO GOLD BOND."

This bond shall pass by delivery, or by transfer upon the transfer books of the company in the city of New York. After registration of ownership certified hereon by the transfer agent of the company, no transfer, except on the books of the company, shall be valid, unless the last transfer is to bearer, which

shall restore transferability by delivery; and it shall continue subject to successive registrations, and transfers to bearer as aforesaid, at the option of each holder.

This registration clause must be signed by the registration agent.

§ 285. Deed by a Corporation.

The form of a deed by a corporation is the same practically as any deed except that it contains clauses granting the power to make the deed from the board of directors, but this may be omitted from the deed, and possibly should be when the deed is properly signed and the name of the company appears in the body of the deed. Every deed has seven requisites: (1) It must be in writing; (2) it must be signed; (3) it must be sealed; (4) it must be attested; (5) it must be acknowledged; (6) it must be delivered; (7) it must be recorded.

These are not all essential requisites, as between the grantor and the grantee the title will pass by making, signing, sealing, and delivering it. It is recorded to give constructive notice of the transfer.

An Approved Form for the State of California.

FORM 52, DEED BY A CORPORATION WITH RESOLUTION BOARD.

This indenture, made this eighth day of March, A. D., one thousand nine hundred and four, by and between the Chloride Mining Company, a corporation duly organized under the law of the State of California, whose principal place of business is in the city and county of San Francisco, State of California, party of the first part, and William Dodge and A. B. Balker, of said city and county, parties of the second part, witnesseth:—

That Whereas, The said party of the first part is a corporation duly incorporated and existing under and by virtue of the law of the State of California, and in pursuance of the statutes in such cases made and provided, has acquired and is owner of a certain mine known as the Chloride Mine, situate in the pioneer mining district in Tulare County, Nevada;

And Whereas, The board of trustees of said corporation duly assembled and duly passed the following resolution:—

“It is resolved by the trustees of the Chloride Mining Company, that it is for the best interest of said company to sell

and convey said mine for the sum of One Hundred Thousand Dollars, gold coin of the United States, and apply the proceeds of said sale for the payment of the debts of said company, and J. S. Dinsmore, President, and John Brown, Secretary of said Chloride Mining Company are hereby authorized and directed to make, execute and deliver for and in behalf of the said Chloride Mining Company and as its act and deed to said William Dodge and A. B. Balker a conveyance of said mine and mining location, (here give general description and location of the mine) and to affix to said conveyance the corporate seal and name of said corporation."

Now, therefore, in pursuance of said resolution aforesaid and in consideration of the sum of One Hundred Thousand Dollars, United States gold coin, paid by said parties of the second part, the receipt whereof is hereby acknowledged, the said party of the first part doth by these presents, grant, bargain, sell, convey and confirm unto the said parties of the second part, their heirs and assigns forever (Give full description of the mine), together with all the dips, spurs, angles, and also all the metals, ores, gold- and silver-bearing quartz, rock and earth therein; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in any-wise appertaining, and the rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said parties of the second part, their heirs, executors, administrators and assigns forever.

In Witness Whereof, the said party of the first part, by resolution of its board of directors, has caused these presents to be subscribed by its president and secretary, and its corporate name and seal to be hereunto affixed, the day and the year as above written.

(SEAL)

The Chloride Mining Company,
By J. D. Dinsmore, President.

Attest: Samuel McCrackin, Secretary.

(Acknowledgment of Deed, see form of.)

§ 286. Mortgages and Deeds of Trust.

The mortgage of a corporation is not necessarily a contract in any particular form. It may be in the form of a deed of trust. Sometimes, however, a deed absolute with a defeasance will operate as a mortgage, and a deed absolute on its face

without the defeasance may be proved by parol to be a mortgage.

Forms have been enacted by the various legislatures of the States and in such cases it is possibly practical for local or local contracts to follow those forms; however, they are not absolute, unless made so by local statute, and any form of contract that is entered into by the respective contracting parties is valid. At this day and age of the world, short forms are considered the better for all kinds of contracts. The courts favor this character of instruments, and business favors this character of instruments.

In regard to forms long drawn out, Chancellor Kent had the following to observe in respect to a deed:—

“But persons usually attach so much importance to the solemnity of forms, which bespeak care and reflection, and they feel such deep solicitude in matters that concern their valuable interest, to make assurance doubly certain, that generally in important cases the purchaser would rather be at the expense of exchanging a paper of such insignificance of appearance for a conveyance surrounded by the usual outworks, and securing respect and checking attacks by the formality of its manner, the prolixity of its provisions and the usual redundancy of its language.”

Furthermore, “I apprehend that a deed would be perfectly competent in any part of the United States, to convey the fee, if it was to be to the following effect: I, A. B., in consideration of one dollar to me paid by C. D., do bargain and sell (or in New York, grant) to C. D. and his heirs (in New York, Virginia, etc., the words, ‘and his heirs,’ may be omitted), the lot of land (describe it). Witness my hand and seal,” etc.

It may be observed generally that the only real difference between a deed and a mortgage is the defeasance clause. There are various clauses, however, which may be injected into a mortgage by the parties.

FORM 53, MORTGAGE BY CORPORATION TO CORPORATION.

Clause concerning interest, insurance, assessments, and receivers provided for may be adjusted to the laws of any State.

This indenture, made this . . . day of . . . , in the year of our

Lord, one thousand eight hundred and , between , a corporation created and existing under and by virtue of the laws of the State of , and doing business in the State of , party of the first part, and , a corporation created and existing under and by virtue of the laws of the State of , having its principal office in the County of , and State of , party of the second part.

Whereas, the , justly indebted to the said party of the second part in the sum of dollars, secured to be paid by certain

Now, therefore, this indenture witnesseth, that the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon according to the tenor and effect of the said above mentioned, and also in consideration of the further sum of one dollar, to it in hand by said party of the second part, at the delivery of these presents the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien and confirm unto the said party of the second part, and to its successors and assigns forever, all the following described, lot , piece , or parcel of land, together with all the rents, issues and profits thereof, situate in the of County and State of , and known and described as follows, to wit:—

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, interest, and claim whatsoever, in law as well as in equity, which the said party of the first part has in and to the premises hereby conveyed unto the said party of the second part, its successors and assigns, and to their only proper use, benefit, and behoof, forever.

Provided always, and these presents are upon the express condition that if the said party of the first part, its successors or assigns, shall well and truly pay, or cause to be paid, to the said party of the second part, its successors or assigns, the aforesaid sum of money with interest thereon, at the time and in the manner specified in the above mentioned . . . , according to the true intent and meaning thereof, then and in that case, these presents and everything herein expressed, shall be absolutely null and void.

But it is further provided and agreed, that if default be

made in the payment of the said.... or any part thereof, or the interest thereon, or any part thereof, at the time and in the manner and at the place above limited and specified for the payment thereof, or in case of waste or non-payment of taxes or assessments, or neglect to procure or renew insurance, as hereinafter provided, or in case of the breach of any of the covenants or agreements herein contained, then and in such case, the whole of said principal and interest secured by the said....in this mentioned, shall thereupon at the option of the said party of the second part, its successors, attorneys, or assigns, become immediately due and payable; anything herein or in said — contained to the contrary notwithstanding, and this mortgage may then be immediately foreclosed to pay the same by said party of the second part, its successors or assigns, and it shall be lawful for the party of the second part, its successors, attorneys, or assigns, to enter into and upon the premises hereby granted, or any part thereof, and to receive all rents, issues, and profits thereof. And the party of the first part hereby authorizes and empowers any attorney of any court of record to enter its appearance upon the filing of any bill to foreclose this mortgage in any court having jurisdiction thereof, and to file an answer for it and in its name, stating the amount that may then be owing on said in this mortgage mentioned for principal and interest also for costs, taxes, insurance, attorney's fees, and other money expended under the provisions contained herein, whether the same be due by the terms of this mortgage or by option of the said party of the second part, its successors or assigns, and to consent and agree to an immediate decree being entered for the amount therein stated to be so due and owing in favor of the said party of the second part, its successors or assigns, and to consent and agree that an immediate sale of said premises may be made, and that no appeal shall be taken from such decree or writ of error sued out thereon.

In case of the filing of any bill in any court of competent jurisdiction to foreclose this mortgage, the court may appoint, to any suitable person, receiver, with power to collect rents, issues and profits arising out of said premises during the pendency of such foreclosure suit, and until the right to redeem said premises from any sale thereof, to be made by virtue of said proceedings, shall have expired, and such rents, issues, and profits shall be applied toward the payment of such indebtedness, and the costs of such foreclosure. And upon the foreclosure of this mortgage by proceedings in court, or

in case of any suit or proceeding at law or in equity, wherein said party of the second part, its successors or assigns, or the legal holder of said, or either of them shall be a party plaintiff or defendant, by reason of their being a party to this mortgage, or a holder of either of said, he or they will be allowed and paid by the said party of the first part, their reasonable costs and charges, and dollars, as attorneys and solicitors' fees in such suit or proceeding, and the same shall be included as a part of the costs in any decree for the foreclosure of this mortgage or the sale of said premises.

And in consideration of the money loaned as aforesaid to the said party of the first part, and in order to create a first lien and incumbrance on said premises under this mortgage, for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first doth hereby agree to surrender up possession thereof to the purchaser or purchasers at such sale, or to any receiver that may be appointed by the court, peaceably on demand.

And the said for itself and its successors and assigns, covenants and agrees to and with the said party of the second part, its successors and assigns, that at the time of the sealing and delivery of these presents, it is well seized of said premises in fee simple and has good right, full power and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatsoever; and that it will forever warrant and defend the same against all lawful claims; that the said party of the first part will in due season pay all taxes and assessments on said premises, and will exhibit once a year, on demand, receipts of the proper persons to said party of the second part, or its assigns, showing payment thereof, until the indebtedness aforesaid shall be fully paid; and will keep all buildings that may at any time be on said premises during the continuance of said indebtedness, insured in such company or companies as the said party of the second part, or its successors or assigns, may from time to time direct, for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness except at the option of said party of the first part, and will make the loss, if any, payable to, and deposit the policy or policies with the said party of the second part, its successors or assigns, as further security for the indebtedness aforesaid. And in

case of the refusal or neglect of said party of the first part, or either of them, thus to insure, or assign the policies of insurance, or to pay taxes, said party of the second part, its successors or assigns, or either of them, may procure such insurance or pay such taxes, and all money thus paid with interest thereon at seven per cent per annum, shall become so much additional indebtedness secured by this mortgage, and to be paid out of the proceeds of sale of the lands and premises aforesaid, if not otherwise paid by said party of the first part. This mortgage is executed pursuant to authority given by the board of . . . of said corporation.

And it is stipulated and agreed, that in case of default in any of said payments of principal or interest, according to the tenor and effect of said . . . aforesaid, or either of them, or any part thereof or of a breach of any of the covenants or agreements herein by the party of the first part, its successors or assigns, then, and in that case the whole of said principle sum hereby secured, and the interest thereon to the time of the sale, may at once, at the option of the said party of the second part, its successors, attorneys or assigns, become due and payable, and this mortgage may be foreclosed in the manner and with the same effect as if the said indebtedness had matured.

In testimony whereof, the said . . . company hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its . . . president, and attested by its . . . secretary, the day and year first above written.

Signed, sealed, and delivered in the presence of—

J. C. Toney, Phelps Dodge Gold Mining Company.

O. C. Sharp (SEAL).

By Thomas Johnson,

By T. J. Roberts.

President.

Attest: P. C. Hull,

T. J. Roberts,

Treasurer.

Secretary.

§ 287. Chattel Mortgages.

The law on chattel mortgages has such a variety of requirements throughout the various statutes of the States of the Union that it would be practically impossible to lay out a form that would cover them all. A chattel mortgage, like any other contract, rests upon the intention of the parties, and further than that, its other essential requirements can be looked to in the laws of the State or country where the contract is made. An approved form that may be adjusted to

suit both corporations and individuals under the requirements of any law, possibly may be as follows:—

FORM 54, CHATTEL MORTGAGE BETWEEN CORPORATION AND CORPORATION.

Know All Men by These Presents, That whereas the Company, a corporation organized under the laws of the State of New York, is indebted unto the Company, a corporation organized under the laws of the State of New Jersey, in the sum of dollars (\$....), being for goods sold and delivered unto the said Company.

Now, for securing the payment of the said debt and the interest thereon to the said Company, does hereby sell, assign, and transfer to the said Company all the goods, chattels, and property described in the following schedule, namely:—

(Describe the property to be mortgaged.) Said property now being and remaining in the possession of said Company at its rooms, No....., Street, New York City.

Provided always, and this mortgage is on the express condition that if the said Company shall pay to the said Company, the sum of dollars (\$....), with interest from date hereof, at the rate of per cent per annum, on or before the first day of, 190., which said sum and interest the said Company hereby covenants to pay, then this transfer is to be void and of no effect; but should said Company not pay said sum, with interest to date of payment, on or before the date aforesaid, then the said Company shall have full power and authority to enter upon the premises of said Company, or any other place or places where the goods and chattels aforesaid may be, and to take possession of said property and to sell the same, or so much thereof as may be necessary to satisfy the said debt and the interest thereon from the proceeds thereof, after deducting all expenses of such sale and the keeping of said property; and any such sale shall be public and only after due announcement thereof for two weeks previous thereto in one of the daily papers published in the city of New York, any proceeds in excess of the amount of said debt and interest thereon, and of the expenses of said sale and keeping of said property, shall belong to the said Company and be paid over to it without delay. If from any cause said property shall fail to satisfy said debt, interest, cost, and charges, the said Company hereby covenants and agrees to pay the deficiency.

In Witness Whereof, The Company has caused its corporate signature to be signed hereunto by its president, and its corporate seal to be affixed and duly attested by its secretary, this day of, 190....

(Corporate Seal)Company.

(Attest Seal) By,
....., Secretary. President.

(For acknowledgment, see forms of.)

§ 288. Debenture.

The debenture, as understood in America, is a character of acknowledged floating indebtedness created by corporations, having the nature of a lien on collateral security and defined by Cavanaugh Money Securities, (2d. ed., p. 355) as,—

“an instrument in writing, generally under seal, creating a definite charge on a definite or indefinite fund or subject of property in favor of a given person, or of a given person and his order or bearer, and constituting a member in a series of instruments each entitling the original holder thereof to similar rights. Hence a debenture is distinguished (1) from a mortgage, which is an actual transfer of property; (2) from a bond, which does not directly affect property; and (3) from a mere charge on property, which is individualized and does not form part in a series of similar charges.”

Debentures may be issued by a single person, by a partnership or by a corporation.

The debenture itself is in fact a note with collateral security deposited with the trustee for its indemnity. They are issued usually in series and are negotiable or non-negotiable as their language implies. They are in different forms and vary in their terms to suit the parties concerned. A form of debenture called “collateral trust indenture,” issued by the Northern Pacific Railway Company was as follows, to wit (the word “indenture” is an old legal term, and was originally given to a deed signed by two persons, which were precisely alike and made side by side with an indenture between the two that could be cut apart so that it would make a zigzag boundary or indenture or cut by an instrument, so it could be torn apart and therein identified by placing the zigzag

portions so they would fit precisely together. The indentures cut thus apart in series, possibly caused them to be named "indentures," otherwise than that the word "indenture" gives it no other significance):—

FORM 55, DEBENTURE.

This indenture, dated May 1, 1893, between the Northern Pacific Railroad and the Farmers' Loan and Trust Company, is to pay off a floating debt of about \$11,000,000, and for other requirements; the railroad company sells its five-year six per cent gold notes to an aggregate amount of \$15,000,000. The following collateral is deposited with the trust company:—

\$10,000,000 par value Northern Pacific consol* five per cent bonds.

\$3,000,000 par value Chicago and Northern Pacific five per cent bonds.

\$6,000,000 par value Chicago and Calumet five per cent bonds.

\$7,000,000 par value St. Paul and Northern Pacific capital stock.

\$15,010,000 par value Chicago and Northern Pacific stock beneficial certificates.

\$343,000 par value Northern Pacific Express Company's stock.

Article 1. Notes shall be \$1,000 each, payable in gold, and may be registered.

Article 2. The railroad company binds itself to make up deficiency if any, after sale of collateral.

Article 3. The railroad company may deliver the collateral from time to time and receive from trust company a proportion of the notes.

Article 4. The railroad company will not, without first obtaining the consent of the committee, or until all the notes are paid, construct new lines or purchase or lease any, or guarantee bonds of other companies or issue its own bonds against such.

Article 5. A committee is formed consisting of Messrs. R. G. Rolston, John A. Stewart, James Stillman, J. D. Probst,

*Consol is an abbreviation of the words "consolidated annuities," used to designate various funds united in one to pay a debt.

and F. T. Gates. Committee shall organize and appoint a secretary. Members may vote in person or by letter or telegram, and shall receive twenty dollars for attendance at each meeting. Majority shall be a quorum.

Article 6. Committee may sell the bonds deposited as collateral from time to time, but without consent of the railroad company can not dispose of Northern Pacific 5's at less than 90, or Chicago and Northern Pacific 5's at less than 95, or Calumet 5's at less than 85. The committee has power to sell all other collateral at times and prices such as the railroad company shall direct and the committee approve. With the money received from such sales the trust company shall purchase the notes in the open market. After May, 1896, the notes can be called for payment by lot. If railroad company shall default in the interest for ninety days, the committee shall sell part of the collateral to realize such interest, or at its option shall have power to declare the principal due, whereupon the trust company shall dispose of underlying securities as determined by the committee. In such case committee may fix a minimum price.

Article 7. Upon any purchase or sale of any coupons belonging to these notes, or upon loans made after date of maturity of said coupons, such coupons shall not be within this indenture.

Article 8. All the notes may be called and paid by the railroad company at any time after May 1, 1896, at par and accrued interest.

Article 9. The committee shall vote all the stock among the collateral. Interest on the bonds shall belong to the railroad company.

Article 10. The Calumet Terminal Railway Company, without consent of the committee, shall not issue any more bonds, but upon payment to the trust company of \$4,500,000, the railroad company shall have the right of withdrawing these Calumet bonds, money to be used to purchase notes in open market.

Article 11. Railroad company and trust company shall have access to papers and accounts of committee, and committee shall have like access to books, papers, and accounts of railroad company.

Article 12. Provides for continuance of a trustee.

Article 13. When notes are paid, they shall be cancelled and delivered to the railroad company.

Article 14. The railroad company will do all necessary acts to carry the intent of the parties into effect.

Article 15. Marginal notes in the indenture not to affect the text. A supplementary agreement provides that the railroad company shall not sell any of the Northern Pacific 5's which it may have in its treasury at less than 90, or pledge the same except under existing contracts without consent of the committee.

Debenture stock is a term used in England to designate a paper that is similar to an American registered bond. It may or may not be secured by mortgage. A mortgage executed in America may cover bonds in America and debenture stock in England. A very ingenious and successful method for providing for the indebtedness of a large concern was invented by the author of "Cook on Corporations," and will be better understood by a quotation from the author himself:—

This Commercial Cable Company mortgage is on all the company's telegraph and cable lines in America and Europe, including the telegraph lines of the Postal Telegraph Company. The mortgage runs for five hundred years, thereby making it practically a perpetual investment, as desired by the English investor. It secures \$20,000,000 of bonds and debenture stock, all bearing the same rate of interest, four per cent. The bonds may at any time be returned to the company and debenture stock obtained in place thereof, at the rate of £206 for every \$1,000 of bonds. The bonds are listed on the New York Stock Exchange; the debenture stock on the London Stock Exchange. The aggregate amount of bonds and debenture stock combined is always exactly \$20,000,000. The debenture stock is drawn in accordance with English forms; is issued in amounts of one pound sterling and upward; is intended solely for the English market, and contains the necessary English features of being practically a perpetual investment, issued in small or large denominations to suit the investor, and having an English place of issue and transfer. This \$20,000,000 mass of debt has gradually merged itself into the English debenture stock, owing to the fact that a good four per cent security sells for a higher price in England than in America. Inasmuch as the author formulated the plan and drew the mortgage deed of trust, bonds, and debenture stock for this combined English and American security, he is able to certify to the successful working of the plan, and is able

to give a copy of the certificate issued to represent the debenture stock, as follows:—

Five Hundred Year Four Per Cent
Debenture Stock.
The Commercial Cable Company.

FORM 56, DEBENTURE STOCK, ENGLISH.

This is to certify that is the registered holder of pounds sterling of the debenture stock of the Commercial Cable Company, issued under the provisions of a mortgage deed of trust and bearing interest at the rate of four per centum per annum, payable quarterly, free of all United States taxes, on the first days of January, April, July, and October, in each year in London, England. The payment of the principal and interest of this debenture stock is secured by said mortgage deed of trust, dated the first day of January, 1897, and made by the said The Commercial Cable Company to the Farmers' Loan and Trust Company (of the city of New York), as trustee, by which mortgage deed of trust all the franchises, property, and assets of the Commercial Cable Company (including the property, franchises, and assets of the Postal Telegraph Cable Company heretofore acquired by said The Commercial Cable Company) are assigned to said The Farmers' Loan and Trust Company upon trusts for securing twenty million dollars (\$20,000,000) bonds or their equivalent £4,120,000 sterling debenture stock of the issue.

Instalments of interest on this debenture stock are to be paid by checks or warrants mailed to proprietors at their addresses registered in the books of said Cable Company.

The stock represented by this certificate is transferable on common transfer forms, to be subsequently registered on the books of the company in London or New York or at the office of such financial agents in London as said Cable Company may from time to time appoint, and in conformity with the provisions of the by-laws in that behalf upon the surrender of this certificate. No transfer for any sum less than one pound or for other than multiples of one pound will be registered.

This certificate shall not be valid unless signed by such official of said The Commercial Cable Company as the board may from time to time appoint for that purpose, and countersigned by the registrar.

Given under the common seal of the company this day of, 190....

The Commercial Cable Company,

By

Countersigned in London this day of, 190....

.....
Registrar.

No transfer of any portion of this stock will be registered without the surrender of this certificate.

§ 289. Bond Another Form for Agent.

Another form of bond suited to be given for the faithful performance of the duties of an agent may be as follows:—

FORM 57, BOND FOR FAITHFUL PERFORMANCE OF CLERK.

Know All Men by These Presents: That we, John Smith and John Doe, of Troy, Ohio, are held and firmly bound unto the Northfield Bank, a corporation under the laws of Ohio, in the sum of one thousand dollars to be paid to the said Northfield Bank, its successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents.

Sealed with our seals. Dated the first day of January, one thousand eight hundred and ninety-four.

The condition of the above obligation is such that, whereas the said Northfield Bank has employed the said John Smith as a clerk in its business of banking. Now, if the said John Smith shall well and faithfully discharge his duties as such clerk, and shall also account for all moneys and property, and other things, which may come into his possession or under his control as such clerk, then the above obligation to be void; otherwise to remain in full force and virtue.

(Signed) John Smith (SEAL).

John Doe (SEAL).

FORM 58, BOND FOR DEED.

A bond for a deed may be in the following form:—

Know All Men by These Presents: That we, F. J. Maguire and Thomas B. Noble, of the County of Santa Barbara, State of California, are held and firmly bound unto F. A. Thompson Realty Company, a corporation under the laws of California, with its office in said county and State, in the sum of five thousand two hundred and fifty dollars, gold coin of the United States of America, to be paid to the said F. A. Thompson Realty Company, its successors or assigns, for

which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the twentieth day of December, one thousand eight hundred and ninety-four.

The condition of the above obligation is such, that if the above bounden obligors shall, on or before the third day of May, one thousand nine hundred and four, make, execute, and deliver unto the said F. A. Thompson Realty Company (provided that the said F. A. Thompson Realty Company shall on or before that day have paid to the said obligors the sum of two thousand seven hundred and fifty dollars [\$2,750], gold coin of the United States of America, the price by said F. A. Thompson Realty Company agreed to be paid therefor) a good and sufficient conveyance of grant, bargain, and sale (or in fee simple), of all that certain lot, piece, or parcel of land situate, lying and being in the town of Santa Barbara, and State of California, and bounded and described as follows, to wit:—

(Description.)

Then this obligation to be void; otherwise, to remain in full force and virtue.

(Signed) F. J. McGuire,
Thomas J. Noble.

BOND FOR LOST STOCK REISSUE.

A form of bond that is suitable to be given where a stock certificate is lost or stolen or otherwise destroyed and a new certificate is desired by the owner, may be as follows:—

FORM 59, INDEMNITY BOND. FOR REISSUED CERTIFICATE OF STOCK.

Know All Men by These Presents: That we, Waldo Scott, of Reno, Nev., as principal, and Warwick Dobbs, of Fresno, Cal., as surety, are held and firmly bound unto the Comstock Native Silver Company, a corporation duly organized under the laws of the State of Utah, its successors or assigns, in the sum of one thousand dollars (\$1,000), to the payment of which to the said corporation, its successors or assigns, we do, by these presents, jointly and severally bind ourselves, our heirs, executors, and administrators.

Signed and sealed this first day of May, 1904.

The condition of the above obligation is that:—

Whereas, The said Waldo Scott, the owner of record of

twenty (20) shares of the capital stock of the said Comstock Native Silver Company, of the par value of \$100 each, has made application to the board of directors of the said company for the issuance to him of a new certificate for the said twenty (20) shares of stock, alleging that the original certificate, No. 500, issued to him therefor on the 21st day of May, 1901, is lost, stolen, or destroyed, and that its present whereabouts and conditions are unknown to him; and,—

Whereas, The said application has been granted, and the said new certificate for twenty (20) shares of the stock of the Comstock Native Silver Company, pursuant to due and formal resolution of the said board of directors, was that day issued to the said Waldo Scott.

Now, therefore, if the said Waldo Scott, his heirs, executors, or administrators, or any of them, do and shall, from time to time, and at all times hereafter, save, defend, keep harmless, and indemnify the said Comstock Native Silver Company, its legal successors and assigns, of, from, and against, all demands, claims, or causes of action, arising from or on account of said certificate No. 500 for twenty shares of the capital stock of the said Comstock Native Silver Company, and of and from all costs, damages, and expenses that shall or may arise therefrom, and shall also deliver or cause to be delivered up to the said Comstock Native Silver Company, the said missing certificate No. 500 for cancellation, whenever and as soon as the same shall be found, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of

Waldo Scott (L. S.),

A. P. Jenkins,

Warwick Dobbs (L. S.).

Edward Kent.

§ 290. Bill of Sale.

A bill of sale is a writing referring to personal property and not to an instrument under seal, and so far as the author has been able to discover, is not a paper usually that is required to be acknowledged and recorded. It may be in a simple form or it may be extended.

FORM 60, BILL OF SALE SIMPLE.

A simple form of bill of sale may be as follows:—

In consideration of one hundred and thirty dollars, to me in hand paid by Company, I hereby sell and deliver to

it my broncho horse, Sir Thomas Lipton, branded "H. H. T." on the left hip.

(Date.)

John Doe.

FORM 61, BILL OF SALE CORPORATION.

Know All Men by These Presents: That the Company, a corporation duly organized under the laws of the State of, with its principal office and place of business at,, in the city of, in consideration of the sum of dollars (\$....), to it paid by the Company of, the receipt whereof is hereby acknowledged, does hereby sell, transfer, and assign to the said Company, the following goods and chattels, viz.:—

All of the machinery, tools, and apparatus mentioned and specified in the annexed schedule and now in the factory building at, Street,;

To have and to hold, all and singular, the said goods and chattels to the said Company, its successors and assigns to their use and behoof forever;

And the said Company does hereby covenant with the said grantee that the said Company is the lawful owner of said goods and chattels; that they are free from all liens; that it has good right to sell the same as aforesaid; and that it will warrant and defend the same against the lawful claims and demands of all persons.

In Witness Whereof, the said Company has caused its corporate name to be signed hereunto by its president, and its corporate seal to be affixed and duly attested by its secretary, said corporate seal being affixed both to these presents and to the schedule hereunto annexed, all being done in the city of, of this the day of ..., 190....

(Corporate Seal)

TheCompany,

(Attest Seal)

ByPresident.

....., Secretary.

§ 291. Bills of Exchange.

A bill of exchange is a written order from one person to another, ordering him to pay to a third a sum of money named.

1. The first person is called the drawer of the bill.

2. The second person is called the drawee.

3. The third person is called the payee.

4. When the second party, or the one directed to pay, has agreed to pay the bill, he is said to have accepted the bill and is called the acceptor.

5. The bill may be in form negotiable, "to order or to bearer;" it will then pass from hand to hand in the usual form with or without endorsement. To order must be endorsed by blank or full endorsement.

7. Bills are inland or foreign. Inland bills are those within the same State. Foreign are those between States or nations independent of each other.

8. A bill of exchange must be in writing, be dated, state the place of making, sum to be paid, time of payment. If no time is stated, bill is payable on demand. Must demand as a right and not as a favor, the absolute and not contingent. Addressed in full name of the drawer or style of firm or corporation, and subscribed by the drawer, and payable in money.

FORM 62, BILL OF EXCHANGE GENERAL.

\$..... Place..... Date.....

.... days (or months) after sight (or date) pay to C., or order, dollars, value received (on account of, or, and charge to the account of).

To Be. (at) A.

Bills of exchange may be at sight or after date.

§ 292. Power of Attorney.

A power of attorney is an authority in writing given by a person or corporation to an individual or corporation to transact either general or special business as the instrument designates. One acting under the power of attorney is merely an agent, either general or special. The rule as to the limit of the agent's power to execute instruments for and on behalf of his principal is that the agent can go no further than the power given him by the instrument under which he operates. He must have as high authority as the instruments he executes; that is to say, if he executes a sealed instrument, his power of attorney must be under seal. If a deed, mortgage, or other instrument is to be executed, they being instruments under seal, or so called *sealed* instruments, then the power of attorney must be acknowledged and sealed; in other words, the power of attorney must be as solemn an instrument as the instrument to be executed or made.

A general power of attorney to execute any and all instruments signed, sealed, and acknowledged, is sufficient to empower the agent to create all instruments from the most solemn deed to the simplest due bill, while a power of attorney, if acknowledged or under seal, even though general in its language, would not authorize the attorney in fact or agent to execute a sealed instrument.

A power of attorney usually has a clause of revocation. This means that the giver of the power of attorney has and reserves the right to revoke the power of attorney at any time.

Powers of attorney sometimes have the clause of substitution. This means that the attorney or agent has the right to substitute another in his place and stead or to himself grant powers of attorney.

A general power of attorney may be as follows:—

FORM 63, GENERAL POWER OF ATTORNEY.

Know All Men by These Presents: That the Arizona Land and Cattle Company, a corporation organized under the laws of Arizona, with its principal office at Phoenix, Ariz., have made, constituted, and appointed, and by these presents do make, constitute, and appoint James Simpson, of said city and county, its true and lawful attorney for it, and in its name, place, and stead, and for its use and benefit, to ask, demand, sue for, recover, collect, and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities, and demands whatsoever as are now or shall hereafter become due, owing payable, or belonging to it, and have, use, and take all lawful ways and means in its name or otherwise for the recovery thereof by attachments, arrests, distress, or otherwise, and to compromise and agree for the same, and acquittances, or other sufficient discharges for the same for it, and in its name, to make, seal, and deliver; to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments, and accept the seisin and possession of all lands, and all deeds and other assurances, in the law therefor, and to let, lease, demise, bargain, sell, remise, release, convey, mortgage, and hypothecate lands, tenements, and hereditaments, upon such terms or conditions, and under such covenants, as he shall think fit. Also, to bargain and agree for, buy, sell, mortgage, hypothecate, and in any

and every way and manner deal in and with goods, wares, and merchandise, choses in action, and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature or kind soever, and also for it and in its name, and as its act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, leases, and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases, and satisfaction of mortgage, judgment and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

Giving and granting unto its said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as it might or could do, with full power of substitution or revocation, hereby ratifying and confirming all that its said attorney, or his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof, The president of the said The Arizona Land and Cattle Company has hereunto signed its corporate name and affixed the seal of the said corporation, all in the city of Phoenix, Arizona Territory, this 1st day of May, A. D. 1905.

(Signed) The Arizona Land and Cattle Company.

(L. S.)

By C. E. Bull,

Attest: C. H. Davis,
Secretary.

President.

Such power of attorney as the above empowering the agent to convey land would have to be acknowledged by the president to entitle it to record, as a conveyance made under it would necessarily show that it was made by an attorney in fact, and this becomes a part of the chain of title.

(See acknowledgment forms of.)

FORM 64, POWER OF ATTORNEY TO VOTE PROXY.

(This is not a sealed instrument, and needs only the signature of the giver.)

Know All Men by These Presents: That I, Emos Rody, do hereby constitute and appoint Bartlett Tripp my true and lawful attorney, for me, and in my name, place, and stead, to

vote as my proxy at the annual meeting of the stockholders of the Light Falls Power Company, on certificate Nos. 1 to 1,000, both inclusive, for the election of trustees and transaction of other business, to be held on the 1st day of January, 1905, and according to the number of votes to which I would be entitled if personally present with full power of substitution and revocation.

Witness my hand and seal June 1st, A. D. 1904.

Emos Rody.

FORM 65, PROXY LONG FORM.

Shares: Preferred..... Common

Know All Men by These Presents: That, the undersigned stockholders in Company, hereby constitute and appoint (or any other of them), with the power to substitute an attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote in respect of all common stock and preferred stock, or either, held by the undersigned, at the special meeting of the stockholders of said company, to be held at city, on the day of, A. D. 1904 (including any adjournment thereof), for the purpose of considering, voting, and acting upon a proposed amendment of the articles of association or charter of said company, increasing its preferred capital stock by the amount of, and its common capital stock by the amount of, and of authorizing the issue of such additional preferred and common stock, and of taking all suitable action in that behalf; and also for and in the name and stead of the undersigned to appear and to vote in respect of all common stock and all preferred stock, or either, held by the undersigned, at the annual meeting of the stockholders of said company, to be held at city, State, on the day of, A. D. (including adjournment thereof), for the purpose of electing directors of said company and for the transaction of any other business which may come before the said meeting; with power, in the name and on behalf of the undersigned to vote at said special meeting and at said annual meeting upon any and all questions and matters included in or relating to the objects of said special meeting or of said annual meeting as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others.

In witness whereof, have hereunto set hand
and seal this day of

Witness:

(SEAL)

REVOCATION OF ATTORNEY.

If power of attorney is under seal, acknowledged and recorded, a revocation thereof would have to be under seal, acknowledged and recorded, and unless the paper was given for the purpose of executing sealed instruments, it would not be necessary to be acknowledged and recorded, and its revocation would necessarily not have to be acknowledged and recorded. A revocation of the power of attorney may be in the following form:—

FORM 66, REVOCATION OF POWER OF ATTORNEY.

Know All Men by These Presents: That whereas I,, of the city of, county of, State of, in and by my letter, warrant, or power of attorney, in writing, bearing date the day of, 190...., did make, constitute, and appoint, of said city, my true and lawful attorney, for the purposes and with the powers therein set forth, as will more fully and at large appear by reference thereto, or to the record thereof, made on the said day of, 190...., in Book, of Powers of Attorney, page, in the office of the county recorder of the said county of

Now, therefore, I, the said, for divers good causes and considerations to me hereunto moving, have revoked, countermanded, annulled, and made void, and by these presents do revoke, countermand, annul, and make void, the said letter, warrant, or power of attorney, and all power and authority thereby given, or intended to be given, to the said. ..

In Witness Whereof; etc.

SUBSTITUTION.

The substitution of an attorney in fact would be an agent created by the attorney in fact, and it would follow that if the substituted agent would have the authority from the attorney in fact to execute sealed instruments, his authority would be under seal, acknowledged and recorded, and the revocation of his authority would be by a like instrument.

FORM 67, PRACTICAL FORM OF POWER.

A very short and practical form of power of attorney to

transact ordinary business may be as follows:—

Be it known that The Tula Swine Company, a corporation formed under the laws of Arizona, with its place of business at Yuma, Ariz., hereby constitute and appoint Wm. Cody to be its attorney in fact, with full authority to make all contracts, and do all acts of a business nature, except the conveyance of real estate as effectually as it could itself do, and if need be, to substitute another attorney in his place with equal powers; and it does hereby ratify and confirm all acts lawfully done in pursuance of this power.

Witness its signature and seal, this 1st day of January, A. D. 1904, as signed by its president and its seal affixed by its secretary at Leavenworth, Kan.

(Corporate Seal)

The Tula Swine Company,

(Attest Seal)

By J. A. Dines, President.

Sam Hartmen, Secretary.

§ 293. Acknowledgments.

Acknowledgments to deed and other instruments under seal were unknown at common law, being a statutory provision. The statutes of the various States must be looked to for the particular enactment of its own locality. A general form for all States would make a cumbersome instrument in and of itself. Some States require acknowledgments to be sworn to. The purpose of an acknowledgment is to prepare the instrument for record so there can be no doubt about the genuineness of it, and, as far as possible, close the door of fraud.

FORM 68, ARIZONA FORM ACKNOWLEDGMENT.

Territory of Arizona }
County of } ss.

Before me (here insert the name and character of the officer) on this day personally appeared , known to me (or proved to me on the oath of), to be the president of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this day of , A. D. 190....

(L. S.)

Joseph Baldwin,
Notary Public.

My commission expires on 10th day of January, A. D. 1908.

FORM 69, ACKNOWLEDGMENT NEW JERSEY.

An approved form for the State of New Jersey is as follows:—

State of New Jersey }
County of Essex } ss.

Be it remembered that on this, the sixth day of February, one thousand nine hundred and four, before a master of the Court of Chancery of the State of New Jersey, personally appeared Robert J. Johnson, to me known, who, being by me duly sworn, according to law, doth depose and make proof to my satisfaction that he knows the corporate seal of the El Dorado Copper Company, the grantor in the foregoing deed named; that the seal affixed to said deed is the proper corporate seal of said company; that Thomas K. Edwards was at the time of the execution of said deed the president of said company, and that the said deed was signed, sealed, and delivered by him as such president, in the presence of the said deponent, as the voluntary act and deed of said company, and the said deponent thereupon subscribed his name as a witness thereto. All of which I certify.

Waldo P. Johnson,
Master in Chancery,
Of New Jersey.

FORM 70, NEW JERSEY PROOF OF CORPORATE INSTRUMENT.

State of New Jersey }
County of } ss.

Be it remembered that on the day of, in the year of our Lord, one thousand nine hundred and, before me, a master of the Court of Chancery of the State of New Jersey, personally appeared, to me known, who being by me duly sworn according to law, on his oath doth depose and say: That he is the secretary (or other officer, or is acquainted with the seal) of the corporation, the grantor in the foregoing deed named; that the seal affixed to the said deed is the corporate seal of the said corporation, that is the president (or other executive officer) of the corporation; that he saw the said as such sign the said deed, and heard him declare that he signed, sealed, and delivered the same as the voluntary act and deed of the said by its order; and that this deponent signed his name thereto, at the same time, as subscribing witness.

Subscribed and sworn to before me, the day and year above written.

In Witness Whereof, The said X. Y. Z. Company has caused these presents to be signed by its president, sealed with its corporate seal, and attested by its secretary the day and year first above written.

(Corporate Seal)

Attest

Secretary.

X. Y. Z. Company.

By

President.

Subscribed and sworn to, me this 1st day of January, A. D. 1904.

John Brown,
Notary Public.

FORM 71, NEW YORK FORM ACKNOWLEDGMENT.

State of New York }
County of } ss.

On the day of, in the year, before me personally came, to me known, who being by me duly sworn, did depose and say that he resided in; that he is the.... of the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Signature of office or officer making the
affidavit of acknowledgment.

§ 294. Affidavit.

A corporation can not in and of itself make an affidavit, and where an affidavit is required, it must be made by some officer of the corporation who is acquainted with the facts. This is usually done by the president, secretary, or treasurer, or general manager, as the case may be, the form varying according to whoever makes the affidavit. The treasurer is sometimes required to make an affidavit as to the financial statement. His affidavit may be in the following form:—

FORM 72, TREASURER'S AFFIDAVIT TO FINANCIAL STATEMENT.

State of New York }
County of New York } ss.

On this 18th day of March, 1904, personally appeared before me, a notary public in and for the county of New York, Russell Sage, treasurer of the Hocking Valley Coal Company, who, being duly sworn, did depose and say that he has full

charge and control of the books and accounts of said company; that the above and foregoing statement is taken from said books and accounts; that it is a true, accurate transcript therefrom, and that, to the best of his knowledge and belief, it is a just and correct presentation of the financial condition of said company on this date.

Russell Sage,
Treasurer.

Sworn to and subscribed before me the day and year aforesaid.

(Notarial Seal)

Rice Hix,
Notary Public
for New York County.

AFFIDAVIT CORPORATION.

About the only difference between an affidavit of a corporation made by one of its officers and the ordinary affidavit of an individual is that the officer who makes the affidavit for the corporation must state in the body of the affidavit his official character, that is, he must state that he is the secretary, treasurer, president, or general manager, as the case may be, and that he knows the facts and that he makes the affidavit for the corporation and on its behalf as such officer. A very common form of affidavit and which may be changed with very little thought to the affidavit of a corporation may be as follows:—

FORM 73, AFFIDAVIT CORPORATION.

State of } ss.
County of

John Doe, of, in said county and State, being duly sworn, says: That (here state the facts, or, if the matters embraced in the affidavit are not within the affiant's knowledge, but have been communicated to him by others in whose assertions he places confidence, then say: That he is informed and believes it true, that,—stating what he has been informed of.)

Subscribed and sworn to before me this
.... day of A. D. 190....

(Notarial Seal)

John Doe,
Notary Public.

STRICT RULES WITH SECRETARY.

Sometimes in large corporations the rules and regulations

are very strict, and the secretary is required to make affidavit to the publication of notice of meeting and various other matters. The affidavit to publication of notice may be as follows:—

FORM 74, SECRETARY'S AFFIDAVIT TO PUBLICATION OF NOTICE OF MEETING.

State of New York }
County of New York } ss.

On this 1st day of January, 1904, before me personally appeared Eli Seely, secretary of the Sonora Guano Company, who, being duly sworn, did depose and say that the annexed notice was published in the *Phoenix Gazette* on the 1st day of January, 1904, and on the 20th day of January, 1904.

Eli Seely,
Secretary.

Sworn to and subscribed before me the day and year aforesaid.

S. P. Galen,
Notary Public in and for
the County of New York.

(Notarial Seal)

§ 295. Notes Promissory.

Corporations, like individuals doing business, issue notes. The only immediate distinction between the note of an individual and the note of a corporation is that the name of the corporation is inserted in the body of the note, and that it is signed by the corporation. It should always be signed by the corporate signature and not by the officers with their official signature. It is not a sealed instrument. There are various kinds of notes, and like any other contract, there may be appended any agreement thereto that the contracting parties see fit to incorporate.

A short form of a note may be as follows:—

FORM 75, CORPORATE NOTE. SIGNATURE BY PRESIDENT.

\$1,000 (State) (Date)

Sixty days after date the Green Tree Oil Company promises to pay to the order of F. O. Curry the sum of one thousand dollars. Value Received.

Green Tree Oil Company.
By Louis Malory,
President.

FORM 76, CORPORATE NOTE.

\$.....

(Place) (Date)

For value received, the X. Y. Z. Company, a corporation, organized and existing under the laws of the State of California, and having its principal place of business at Book County, California, promises to pay to the Lipton Bank or order, one day after date, without grace, five thousand dollars at the office of said Lipton Bank, in the city of Fresno, State of California, with interest from date until paid, at the rate of twelve per cent per annum, interest payable monthly, and if not so paid to be compounded monthly; all payments of principal and interest to be made only in gold coin of the government of the United States of America.

(Corporate Seal)

X. Y. Z. Company.
By J. W. Williams,
President.
By Wiley Jones,
Secretary.

FORM 77, COLLATERAL NOTE WITH POWER OF PURCHASE AND MARGINAL GUARANTEE.

\$.....

(Place) (Date)

.... after date, promise to pay to the order of
.... dollars for value received, without defalcation, hereby waiving all right to stay of execution and exemption of property in any suit in this note.

As collateral security have delivered which hereby authorize and empower the holder hereof, on default in payment at maturity, with a view to its liquidation, and of all interest and costs thereon to sell and transfer, in whole or in part, without any previous demand upon or notice to, either at brokers' board or at public or private sale, with the right of becoming the purchaser and absolute owner thereof, free of all trusts and claims, should such sale be made at brokers' board, or be public. Furthermore, agree that so often as the market price of these and subsequently deposited securities shall, before maturity of this note, fall to a price insufficient to cover its amount, with per cent margin added thereto. will, on demand, within two hours thereafter, deposit with the holder additional security, to be approved by said holder, sufficient to cover said amount and margin; and that, in default thereof this note shall become instantly due and payable precisely as though it had actually matured, and all the foregoing rights to sell and transfer col-

laterals shall at once be exercisable, at . . . risk, in case of any deficiency in realizing proceeds.

§ 296. Check by Corporation.

The signing of checks by a corporation is the same as the signature to any other written instrument or contract. Corporate or official signatures may be used, though it is far better to use the corporate signature. It is likewise sometimes provided that checks given by a corporation should be countersigned. A check like any other contract, will not be invalidated by an insertion on the face of the check of the purpose for which the check is given. For instance, a check given in payment for rent for a certain place, building, or room, or whatever it may be given for, may state on the face of it to that effect. If this is done, the check not only furnishes a means of payment, but it also takes the place of a receipt or voucher, showing just what the check was given for, and when it is endorsed by a payee, it also shows as a matter of evidence, that it must have been understood by the receiver of the check that he took it for the purpose and consideration stated on the face of the check.

FORM 78, CHECK COMMON.

A common form of a check with a corporate signature may be as follows:—

Check	Corporate Signature
No.	(Place) (Date)
.....	
..... Bank,	
No., Street.	
Pay to the order of	\$.....
..... Dollars.	
The Vulture Mining Company,	
J. M. Taber, President,	
John Grigsby, Treasurer.	

FORM 79, CORPORATE CHECK.

A corporate check, countersigned, may be as follows:—

No.	(Place) (Date)
The	Bank,
of the city of	

Pay to the order of \$.....
 Dollars.
 Countersigned, Company.
 By
 Treasurer.
 President.

SIGNING NAME BY RUBBER STAMP.

To facilitate the signing of the corporate name, it is easy to provide a rubber stamp.

§ 297. Leases.

Leases are conveyances of an interest in real estate. It may be by parol or in writing. Any permissive occupation is within the scope of a lease. No particular form of expression is essential to create a lease. A lease, however, for more than a year ought to be reduced to writing, acknowledged, and recorded in order to protect the lessee, as it would be a contract about real estate, and within the statute of frauds and void.

A lease is like any other contract; its interpretation rests upon the intention of the parties, and whenever the writing is sufficiently explicit to make manifest the intention of the parties thereto, it will be sufficient.

There are many forms of leases and many clauses to be inserted to meet various requirements of the contracting parties. A general form of a lease may be as follows:—

FORM 80, LEASE GENERAL.

This lease, made this day of, between A. B. Company, a corporation, with its place of business at Chicago, Ill., party of the first part, and C. D., of Prescott, Ariz., party of the second part, witnesseth:—

That the said party of the first part does by these presents lease to the said party of the second part the following described property, to wit:—

(Describe the property.)

To have and to hold the same to the said party of the second part, from the day of to the day of

And the said party of the second part covenants and agrees with the party of the first part to pay the said party of the

first part as rent for the same, the sum of dollars, payable as follows, to wit:—

(State the time and terms of payment.)

The said party of the second part further covenants with the said party of the first part, that at the expiration of the time mentioned in this lease, peaceable possession of the said premises shall be given to said party of the first part, in as good condition as they now are, the usual wear, inevitable, and loss by fire excepted; and that upon the non-payment of the whole or any portion of the said rent at the time when the same is above promised to be paid, the said party of the first part may, at his election, either distrain for said rent due, or declare this lease at an end, and recover possession as if the same was held by forcible detainer; the said party of the second part hereby waiving notice of such election, or any demand for the possession of said premises.

The covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties to this lease.

Witness said parties' hands and seals.

(Signature of Lessor) (SEAL).

(Signature of Lessee) (SEAL).

FORM 81, LEASE BY POWER OF ATTORNEY.

The following form of lease may apply to a lease by a power of attorney:—

This lease, made this day of, between A. B., of, etc., by A. B., his attorney, of the one part, and C. D., of, of the other part, witnesseth:—

Whereas the said A. B., by a certain writing, or letter of attorney under his hand and seal, duly executed, dated the day of, amongst other things therein contained, did authorize the said A. A., in the name of him, the said A. B., and on his behalf, to execute leases of such part of his lands, tenements, and hereditaments, in, as by the said A. A. should be thought fit to be leased.

Now this indenture witnesseth:—

That for and in consideration of the sum of, to the said A. B., paid by the said C. D., the receipt of which is hereby acknowledged, he, the said A. B., by his attorney, does hereby lease unto the said C. D. the following described premises (describing them).

To have and to hold, etc.

Yielding and paying, etc.

And the said C. D. covenants with the said A. B., his heirs, etc., to pay the rent, etc.

And the said A. B., by his attorney, for himself, his heirs, executors, administrators, and assigns, covenants with said C. D., etc.

§ 298. Form 82, Contract Sale of Corporate Stock.

This agreement, etc., witnesseth:—

That said A. B. shall sell and convey to said C. D., on or before the day of next, one hundred shares of the capital stock of the company, now owned and held by said A. B., and standing in his name on the books of said company, and to execute unto said C. D. all assignments, conveyances, and transfers necessary to assure the same to him, his heirs, and assigns.

That the said C. D., in consideration thereof, shall pay unto said A. B. for each and every share of said stock, the average market price of the same for and during twenty days preceding the day of aforesaid, to be determined by the sales made at the board of brokers in the city of

In Witness Whereof.

§ 299. Release.

A release of a contract, obligation, or duty is the giving up and the abandoning of that right or the right to exercise or enforce that right. This may be done by writing or parol or by lapse of time. It is indicated in deeds by the words, "remised, released, and forever quit-claimed."

A release may be in the following form:—

FORM 83, RELEASE OF ALL CLAIMS, DEMANDS, ETC.

I, A. B., of, in the county of Guce, and State of Missouri, for and in consideration of the sum of 1,000 dollars, the receipt of which is hereby acknowledged, do hereby release and forever discharge C. D., (of, in, etc.), his heirs, executors, and administrators, and of and from all actions, causes of action, suits, controversies, claims, and demands whatsoever, for and by reason of any matter, cause or thing, from the beginning of time to this 1st day of January, A. D. 1904.

In Witness Whereof, I have hereunto set my hand the day and year last above written.

A. B. Hotchkiss.

Executed in presence of John Butler,
R. D. Deal.

§ 300. Form 84, Common Stock.

STOCK OR SHARE CERTIFICATE.

Incorporated under the laws of the State of Capital, \$1,000,000. Share, \$100 each. Fully paid and unassessable.
 Number Shares

This certifies that is the owner of shares of the capital stock of the Company, transferable only on the books of the company, in person or by attorney on surrender of this certificate.

In Witness Whereof, The said company has caused these presents to be signed by its president and treasurer.

Dated this day of, 190....
, Treasurer., President.

STUB OF STOCK OR SHARE CERTIFICATE.

No. Shares.
 Issued to—

.....

Date, 190....

Received the above described certificate.

.....

FORM 85, CERTIFICATE OF PREFERRED STOCK REGISTERED.

(Number.) (Shares.)

Incorporated and registered under the laws of the State of Capital stock, \$.... Preferred stock, \$.... Common stock \$....

The Company.

This is to certify that is the registered holder of shares of the preferred capital stock of this company, transferable only on the books of this company, in person or by duly authorized attorney, upon surrender of this certificate.

This stock is part of an issue amounting in all to \$.... par value, authorized by the certificate of incorporation of the company, filed in the office of the secretary of state of the State of, on the day of, 190....

The holders of this preferred stock are entitled to receive, and the company is bound to pay, a fixed yearly dividend of per centum per annum, payable half yearly, before any dividend shall be set apart or paid on the general stock (and the dividends of the preferred stock are cumulative). The preferred stock is subject to redemption at par on the day

of 190...., and the holders of the preferred stock may choose directors, and the holders of the general stock may choose directors of the company. The seal of the company and the signature of the president and treasurer., the day of, 190....

.....President.
.....Treasurer.

Shares, \$100 each.

§ 301. Form 86, Notice of Dividend.

Office of the Board of Directors,
.....Company,
.....190....

To A. D., Chicago, Ill.—

The board of directors of this company have this day declared a dividend of dollars and cents (\$.) per share, payable on the day of to the day of, next.

By order of the board.

....., Secretary.

FORM 87, DIVIDENDS DECLARED.

Resolved, That a dividend of per cent on the capital stock of the corporation, amounting to \$., be and the same is hereby declared out of the surplus earnings of the corporation, already secured or hereafter to accrue, payable in the United States gold coin to the stockholders of the corporation in proportion to their respective holdings of stock on the day of, and on the day of each month thereafter in the year.

FORM 88, PERMANENT DIVIDEND ORDER.

.....190....

The Company, New York City.

Until this order is revoked in writing, please remit by mail to the address as per margin, by check drawn to order of, the dividend now due, or which may hereafter be declared, on shares of the capital stock of the Railway Company, now or hereafter standing in the name of (give name exactly as it appears on stock certificate).

Witness:

(Shareholder's signature).

.....

Full name and post-office address to which check is to be mailed.

.....,
.....

§ 302. Form 89, President's Annual Report.

Annual Report to the Stockholders of
The Canada Mining Company,
For the Fiscal Year Ending May, 190....
Directors and Executive Officers of The Canada Mining
Company,, 190....

Directors.

., New York.
., Philadelphia.
., Chicago.
., Newark.

Officers.

President, Vice-President

Treasurer and Secretary,

Registrar of Stock—The Trust and Fidelity Company of
Philadelphia.

Offices.

Mills Bldg., New York City. Prudential Bldg., Newark.
Board of Trade Bldg., Chicago, Ill.

To the Stockholders:—

I beg leave, on behalf of the board of directors of this
company, to submit the following annual report: etc., etc.

Renfrew Mining Enterprise.

The most important of these, etc., etc.

Sainte Sur de Marie Mines.

These mines were acquired under, etc., etc.

., President.

Dated Chicago, Ill., January, 190....

FORM 90, PRESIDENT'S ANNUAL REPORT.

To the Stockholders of the

. Company:—

Gentlemen: It gives me a great deal of pleasure to report
that the general condition of this company is much better now
than it was one year ago. The early portion of the year was
marked by a general depression in the cement trade, the price
of . . . barreled cement running down from \$. . . to \$. . . .
A very unfortunate strike just at this juncture prevented the
filling of contracts even at this price, and later resulted in
several damage suits for breach of contract. These were, how-
ever, compromised on terms quite advantageous to the com-
pany, without extended litigation.

The strike itself was brought to a settlement by conces-
sions on both sides, the men yielding all their demands ex-

cept as to the hours of labor, the company on that point agreeing to reduce the working day from ten hours to nine hours without reduction of wages.

From that time the company has enjoyed a period of uninterrupted prosperity. cement rose June 1 to \$.... per barrel, which price it has maintained. Since that time the company, though working its plant to its fullest capacity, has been entirely unable to meet the demands, the total sales for 190.... running up to barrels, as against barrels in 190..... The average per centum of profit has been greater in 190...., after deduction of all fixed charges, repairs, maintenance, office expenses, etc., aggregating \$.... as against in 190....

Out of these net receipts \$.... has been set aside for additional equipment, and from the remaining profits, \$.... has been passed to the reserve fund, leaving \$...., amounting to per cent upon the total outstanding stock of the company, available for dividends.

In conclusion, I would state that the company generally is in good condition, new contracts for shipping have been unusually favorable to the company, its relations with its customers are entirely satisfactory, and the outlook for the ensuing years is most promising.

Respectfully submitted,

.....,
President.

..... Company.

.....New York, Jan., 190....

§ 303. Form 91, Report of Committee on By-laws.

To the Stockholders of the

..... Company:—

Gentlemen: Your committee appointed at the last annual meeting of the stockholders to report any needed amendments or changes in the by-laws of this company beg to submit the following:—

1. We would recommend the addition of a by-law providing for an executive committee to consist of three members of the board of directors; such committee to have full control of the general business affairs of the company in the interim between meetings of the board.

2. We would recommend that the present by-law relating to the regular meetings of the board of directors be so changed

as to provide for quarterly meetings of the board instead of monthly meetings, as at present.

3. We strongly disapprove of the suggested amendment to the by-laws whereby the amount of indebtedness which may be incurred by the directors on behalf of the company at any one time is increased from \$10,000 to \$25,000, as we believe such change to be not only unnecessary, but against the interests of the company.

Respectfully submitted,

James F. Gill,
H. B. Sill,
O. W. Holmes,

Committee on by-laws.

Albany, New York,
Jan. 24, 1903.

§ 304. Form 92, Notice of Close of Transfer Books.

Standard Company,
Treasurer's Office, Rookery Building,
Chicago, April 1, 190....

To J. D., Rock Island, Ill.—

The transfer books of this company will be closed May 15, at 3 P. M., and reopened May 25, 190....

W. E. R., Secretary,
Standard Company.

§ 305. Form 93, Corporate Calendar.

of the
..... Company.
of New York City.

190....

January.

1st. Franchise tax payable. Must be paid before Jan.
Based upon November report. Amount of tax fixed and statement thereof rendered to the company by State Comptroller, to checks should be made payable.

2nd. Notify stockholders of annual meeting to be held January 13.

3rd. Notify directors of meeting to be held January 14. If directors are elected at annual meeting, this notice will be vitiated, and must be replaced by waiver of notice signed, after the election, by all the newly elected directors.

4th. Annual meeting of stockholders at 3 P. M.

5th. Directors' meeting at 4 P. M. Of election of directors

was held at annual meeting; have waiver of notice signed by each director.

6th. Annual report. To State officials. Must be filed before January 30. Execute in duplicate and file with both secretary of state and county clerk. No State filing fees. County clerk's fee, six cents. Blanks supplied by officials. No penalty is incurred if this report is omitted, unless such filing is requested by some stockholder or creditor of the company. If so requested, report must be filed within thirty days after such request is made.

7th. Notice of city assessment sent out about this time. If not received, inquiry should be made at office of commissioner of taxes and assessments to ascertain amount, as the commissioners are under no obligation to send out any notice thereof. If assessment is unsatisfactory, application for revision, accompanied with a statement of the actual condition of the company, as of the second Monday in January, must be sent in to the commissioners of taxes and assessment not later than March 31. Blanks for an application and statement furnished by commissioners.

February.

March.

8th. Statement and application for revision of unsatisfactory assessments, if not already filed, should be sent in to the commissioners of taxes and assessments without delay. Will not be received after March 31. Blanks furnished by commissioners. No fees.

April.

3rd. Notify directors of meeting to be held April 8.

8th. Directors' meeting at 4 P. M.

May.

June.

July.

3rd. Notify directors of meeting to be held July 8.

8th. Directors' meeting at 4 P. M.

August.

September.

23rd. City taxes. Get statement of amount from assessors' office. If paid before November 1, rebate at rate six per cent per annum is allowed from date of payment to December 1.

October.

9th. Notify directors of meeting to be held October 14.

14th. Directors' meeting at 4 P. M.

November.

1st. Comptroller's report. Must be sent in on or before November 15. Blanks furnished by comptroller. No fees.

15th. City taxes. If not paid before December 1, one per cent is added to amount.

December.

15th. City taxes, if still not paid, draw interest at the rate of seven per cent per annum from January 1.

22nd. Close transfer books for annual meeting of Jan. 12, 1904.

§ 306. Form 94, Dissolution of Corporation Under the Laws of Arizona Territory.

To All to Whom These Presents Shall Come, Greeting:—

A majority of the members of the Blue Eye Mining Company having met at the principal office of the company at Phoenix, Ariz. (or elsewhere, as the case may be), due notice of the time, place, and purpose of the meeting having first been given to all the stockholders.

And Whereas, The undersigned stockholders of the said mining company deeming it most advisable and beneficial to the said corporation that the same should be forthwith dissolved;

Now, therefore, we, the undersigned, being all the stockholders of the Blue Eye Mining Company, pursuant to the powers vested in us by par. 772, Revised Statute of Arizona, 1901, by a majority vote of all the members (no less number can dissolve a corporation under the laws of Arizona), do hereby dissolve said corporation and order this resolution spread upon the minutes of the company, and a duplicate filed in the office of the county recorder (of the county where the original articles are filed), of the Territory of Arizona.

Dated this 1st day of January, 1904.

(Signed) J. D. Stowalter,
Simeon B. Bacon,
Rodney Smith,
Solemn J. Holder.

(This instrument to entitle it to record under the laws of Arizona Territory must be acknowledged by the members who sign it.)

If the acknowledgment is made before a notary public, the notary public must state the date when his commission as a notary public expires.

There is no provision under the laws of Arizona requiring this paper to be either filed or recorded.

FORM 95, CERTIFICATE OF DISSOLUTION BY UNANIMOUS CONSENT
OF ALL STOCKHOLDERS. NEW JERSEY FORM.

Certificate of dissolution by unanimous consent of all stockholders of the A. B. Company.

The location of the principal office in this State is at No. 24 Canal Street, in the city of Newark, county of Mammoth, N. J.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is Peter Samuels.

We, the subscribers, being all the stockholders of the A. B. Company, a corporation of the State of New Jersey, deeming it advisable and most for the benefit of said corporation that the same should be forthwith dissolved, and do hereby give our consent to the dissolution thereof, as provided by "An act concerning corporations (Revision of 1896)," and do sign this consent, to the end that it may be filed in the office of the secretary of state of New Jersey.

Witness our hands this 1st day of January, A. D. 1904.

(Signed) J. D. (SEAL).
P. S. (SEAL).
G. M. (SEAL).

State of New Jersey }
County of Mammoth } ss.

Joseph Thompson, the secretary of the above-named A. B. Company, being duly sworn, on his oath says that the foregoing consent to the dissolution of said corporation has been signed by every stockholder of said company.

Subscribed and sworn to before me this 1st day of January, A. D. 1904.

Max Price,
Notary Public.

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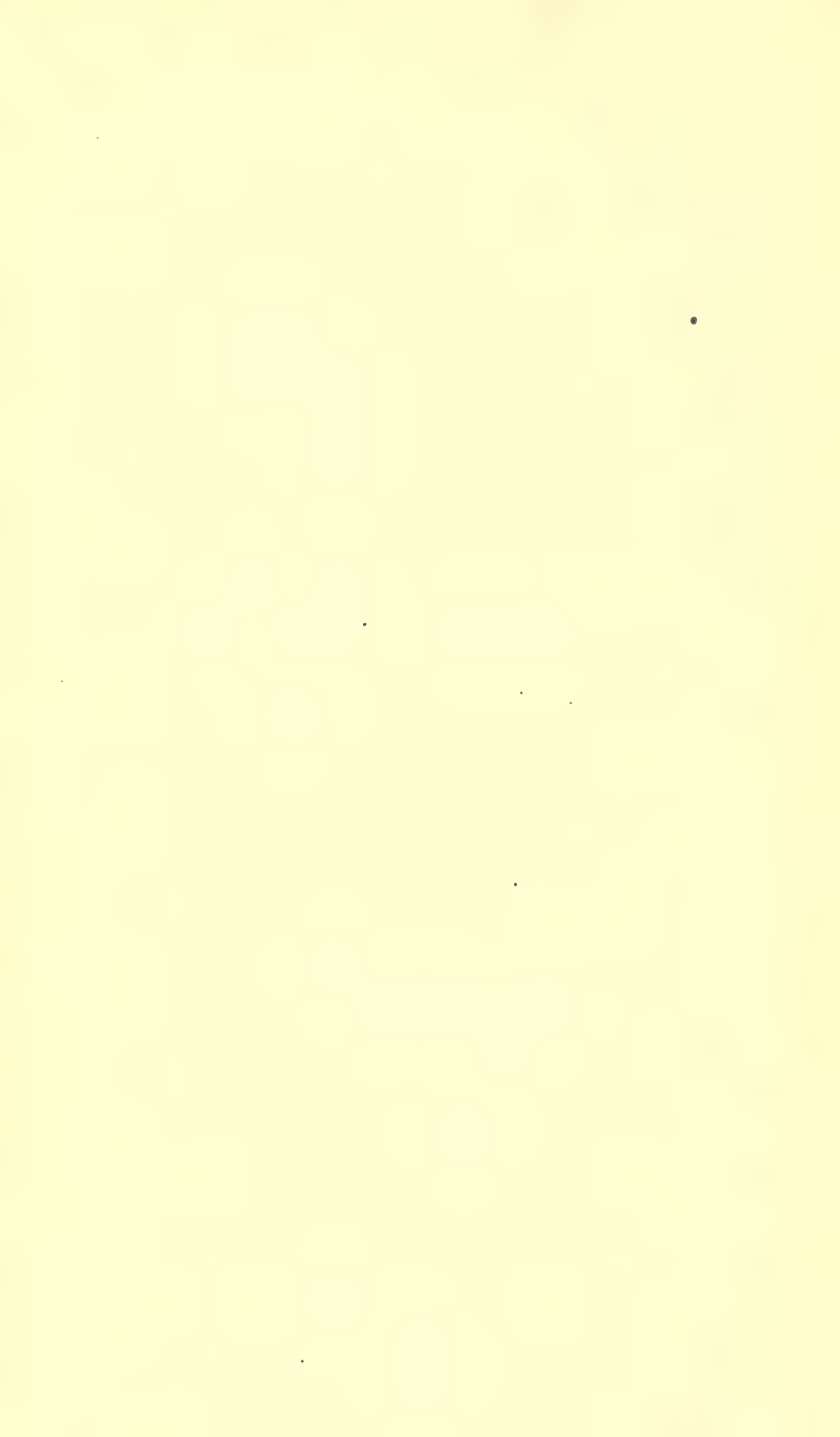
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